Department Of Law

University of Calcutta

Hazra Campus

51/1, Hazra Rd, Ballygunge, Kolkata, West Bengal

700019

• By the Students • Of the Students • For the Students

1ST SEMESTER FAMILY LAW-I

Initiated by:

ANANDA BISWAS (GENERAL SECRETARY)

Arranged by:

DIPSHIKHA BHANDARI

ANANDITA NANDY

(JOINT SECRETARIES OF ACADEMIC COMMITTEE)

Circulated by:

MEMBERS OF THE ACADEMIC COMMITTEE

THANKS TO.

SURYAJYOTI SARKAR

(PRESIDENT)

Contact -

8240421377

+91 93305 15126

Courtesy: DEPARTMENT OF LAW, CALCUTTA UNIVERSITY, HAZRA CAMPUS TMCP STUDENT'S UNIT

Table of Contents

TITLE **PAGE NO.**

1. About the committee……2
2. Objectives of the committee……..3
3. Acknowledgement……4
4. Disclaimer……..5
5. General……6
6. Sources Of Hindu Law……..16
7. The Hindu Marriage Act, 1955……41
8. The Hindu Succession Act, 1956……96
9. The Special Marriage Act,1954……113
10. The Hindu Adoption And Maintenance Act,1956……127
11. Important case law from HAMA,1956……151
12. Case list……154

About the Committee

The Academic Committee of the Department of Law at the University of Calcutta is a newly formed body established in the month of September, 2024, comprising dedicated students from all 5 years of the BA LLB program. This diverse committee is designed to foster a collaborative academic environment, drawing on the unique perspectives and experiences of its members to enhance the educational journey of the students.

With a total of 12 members, including two Joint Secretaries, the committee operates under the auspices of the Student Unit (TMCP) of Department of Law, University of Calcutta. Its primary mission is to develop comprehensive study materials and notes that cater to the specific needs of law students, ensuring they have access to essential resources for their academic success.

In addition to creating study materials, the committee is committed to provide valuable support through organized online doubt-clearing sessions and compiling lists of important exam questions. By engaging students from various academic years, the committee aims to create a vibrant community that encourages knowledge sharing and academic excellence across all levels of the BA LLB program. Through these initiatives, we aspire to empower students and enhance their understanding of legal concepts, preparing them for both examinations and future careers in law.

Objectives Of the Committee

The Academic Committee of the Department of Law at the University of Calcutta is dedicated to enriching the academic experience of BA LLB students through several key initiatives. A primary focus is developing comprehensive study materials, including high-quality, well-researched notes covering essential topics in the BA LLB curriculum. This ensures students have valuable resources to support effective learning and exam preparation.

To aid examination success, the committee curates and distributes a list of important questions and topics, helping students focus on critical areas and improve performance. Regular online doubt-clearing sessions further support students by providing a platform to clarify course content, ask questions, and engage in discussions on complex legal concepts.

The committee also emphasizes practical learning through workshops and seminars with legal professionals, offering insights into the legal field and connecting theoretical knowledge to real-world applications. Additionally, fostering a collaborative academic community is a priority, encouraging knowledge sharing and support among students across different years.

Looking ahead, the committee plans to introduce new initiatives such as guest lectures and legal research projects to further enhance the academic experience and prepare students for future careers in law.

Acknowledgement

The Academic Committee of the Department of Law at the University of Calcutta extends its heartfelt gratitude to all those who have supported the establishment and ongoing efforts of this committee. We would like to express our sincere appreciation to the University of Calcutta for providing a conducive environment for academic growth and innovation.

We are especially thankful to the Student Union members, ***Surya Jyoti Sarkar*** *(President) and* ***Ananda Biswas*** *(General Secretary) for their unwavering support and guidance, which has been instrumental in facilitating our operations and ensuring that student voices are effectively represented in our initiatives.*

We also appreciate the enthusiasm and commitment shown by our Committee Secretaries - ***Anandita Nandy and Dipshikha Bhandari*** *of 7th Semester and Executive Members – 9th Semester-* ***Ridhikamini Basu Mallick,*** *7th Semester -* ***Ritisha Majumder, Maitreyee Roy****, 5th Semester -* ***Anu Mondal, Manami Pramanick, Supriti Murmu****, 3rd Semester –* ***Diksha, Krishna Thakur, Pragya Shukla, Arkodyuti Pramanick, Debapriya Dutta*** *in working collaboratively to enhance the academic environment for law students. Together, we aim to create a vibrant learning atmosphere that prepares students not only for examinations but also for their future careers in law.*

Disclaimer

The notes mentioned in the pdf are prepared for assistance of students in the Department of Law, Calcutta University. They are aimed at supplementing the efforts of students. Students are sincerely advised to attend classes and study by themselves, using these notes only as a means of reference to enhance their knowledge for examinations. This Committee does not condone missing classes or forsaking of own research for academic purposes.

I. General

1. Who are Hindus?

Till this day, there is no precise definition of the term 'Hindu' available either in any statute or any judicial pronouncement; it has defied all efforts at definition. However, since Hindu law applies to all those persons who are Hindus, it is necessary to know who are Hindus. The persons to whom Hindu law applies may be put in the following three categories:

(a) Any person who is a Hindu, Jain, Sikh or Buddhist by religion, i.e., Hindus by religion;

(b) Any person who is born of Hindu parents (viz., when both the parents or one of the parents is a Hindu, Jain, Sikh or Buddhist by religion) i.e., Hindu by Birth;

(c) Any person who is not a Muslim, Christian, Parsi or Jew, and who is not governed by any other law.

Development of Hindu Religion-

The most remarkable feature of Hinduism is that it has always permitted religious innovations, and thus time and again new dimensions are added to Hindu religion. Movements have taken place sometimes discarding some old practises and rituals, sometimes reviving some old practises and rituals and sometimes making new innovations. Some have professed to purify Hindu religion and some had claimed to enrich it. Prominent among the modern developments are Brahmos, Arya Samajists, Radhaswamis, Satsangis and Syamariyathiais. By and large, these movements represent a revolt against orthodox practises of Hindus, particularly the ceremonial and ritual aspect of Hinduism, or against the rigidity of caste system. All these movements purport to free Hinduism from the supposed or real degeneration and profess to resurrect it. And for this very reason, followers of these movement and sects are nothing but Hindus.

According to Section 2 of the Hindu Marriage Act, 1955,

2. Application of Act. —

(1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation. —The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be: —

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

Hindus by Religion-

Two types of persons fall under the category:

(a) Those who are originally Hindus, Jains, Sikhs, or Buddhist by religion and

(b) Those who are converts and reconverts to Hindu, Jain, Sikh or Buddhist by religion.

Followers of Jainism, Sikhism and Buddhism- Even before the codified Hindu law it was well settled that Jains, Buddhists and Sikhs were governed by Hindu law as modified by custom prevailing amongst them. The Hindu law also includes them under the term 'Hindu'.

Jainism has an origin and history much anterior to the Smritis. Jainism rejects authority of the Vedas and discards all ceremonies and rituals. Jainism does not believe in the existence of God. It holds by tapasya, by discarding worldly life and its worldly manifestations, atma can become parmatma and thus one can attain salvation(moksha). Both the codified and uncodified Hindu law applies to Jains.

Sikhs are dissenters from Hinduism. According to them, God is one and discards all forms of Hindu worship and class distinctions. The codified Hindu law applies to them as it applies to Hindus, Jains and Buddhist.

Any person who is a Hindu, Jain, Buddhist, or Sikh by religion is a Hindu if:

i. he practises, professes or follows any of these religions, and
ii. he remains a Hindu even if he does not practise, profess or follows the tenets of anyone of these religions.

Hindu by declaration-

The Kerala High Court in ***Mohandas vs. Dewasan Board,***[1] has gone a step further from the proposition propounded by the Supreme Court in Peerumal. It held that when a person declares that he is follower of Hindu faith and if such a declaration is bona fide and not made with any ulterior motive or intention, it amounts to having accepted the Hindu approach to God. He becomes a Hindu by conversion. In this case one Jesudas, a catholic Christian by birth and a famous playback singer used to give devotional music in a Hindu temple and worshipped there like a Hindu. He had to file a declaration, "I declare that I am a follower of Hindu faith." On these facts the Court that held Jesudas was a Hindu and could not be prevented from entering the temple.

In sum, under modern Hindu law, the following propositions were established. A non-Hindu will become a Hindu by conversion:

(a) if he undergoes a formal ceremony of conversion or reconversion restrained by the caste or community to which he converts or reconverts; or

[1] 1975

(b) if he expresses a bona fide intention to become a Hindu accompanied by conduct unequivocally expressing that intention coupled with the acceptance of him as a member of the community into the fold of which he was ushered into; or

(c) if he bona fide declares that he is a Hindu.

Hindu by birth-

Under modern Hindu law, a person will be a Hindu:

(i) if he is born of Hindu parents (i.e., when both parents are Hindus) or,

(ii) if he is born to a Hindu parent (i.e., one of the parents is Hindu) and he is brought up as a Hindu.

When both parents are Hindus-

Children born of Hindu parents are Hindus. It is necessary that both the parents should be Hindus, Sikhs, Jains or Buddhists. If one parent is a Hindu and the other is Jain, Sikh or Buddhist, then the child will be Hindu. Such a child may be legitimate or in illegitimate. It is immaterial that such a child does or does not profess, practise or have faith in the religion of its parents. He may grow into adulthood at as a totally irreligious person, or as and atheist. The emphasis is on birth. If at the time of birth both parents were Hindu, the child is a Hindu. If after the birth of the child, both or one of the parents convert to another religion, the child will continue to be a Hindu child, unless, in the exercise of parental right the child is also converted into the parental enter religion in which the parent or parents have converted.

When one parent is Hindu-

A person will be Hindu if the following conditions are satisfied:

(i) at the time of his birth one of the parents was Hindu, and

(ii) he is brought up as a member of the tribe, community, group or family to which Hindu parent belonged at the time of the birth of the child. This was the position even before the codified Hindu law.

Under the modern Hindu law, the child's religion is not necessarily that of father. If the mother as a child at the time of the child's birth was a Hindu and the child was brought up as a Hindu, the child would be a Hindu. In the codified Hindu law, it is made evident by the use of the word 'belonged' in explanation *(b) of Section 2 of Hindu Marriage Act, 1955*. For instance, a child is born of a Hindu mother and Muslim father. The child is brought up as a Hindu. Subsequently,

the mother converts to Islam. At this point of time the question arises whether the child is a Hindu, we find that neither of the parents is a Hindu, but nonetheless the child is a Hindu. The same will be the position if the child is brought up as a Hindu after death of the Hindu parents.

2. Explain the term 'Hindu by birth'.

The term "Hindu by birth" is significant under the Hindu Marriage Act, 1955, as it defines who is subject to the provisions of the Act, thus clarifying its jurisdiction. Section 2 of the Hindu Marriage Act outlines who is considered a "Hindu" for the purposes of this law, and "Hindu by birth" falls within these definitions. The term "Hindu by birth" refers to those individuals who are automatically deemed Hindus because of their familial or religious heritage.

Under Section 2 of the Hindu Marriage Act, 1955, "Hindus by birth" includes three main categories of individuals:

1. **Persons Born to Hindu Parents:**

   A child, whether legitimate or illegitimate, whose both parents are Hindus, Buddhists, Jains, or Sikhs by religion is automatically classified as a Hindu by birth. The inclusion of other faiths, like Buddhism, Jainism, and Sikhism, is due to their roots in Hindu philosophy and heritage, which the Act acknowledges.

2. **Persons Born to One Hindu Parent:**

   If a child, legitimate or illegitimate, has one Hindu parent (either Hindu, Buddhist, Jain, or Sikh) and is brought up within the Hindu community, they are also considered Hindu by birth. Here, the Act considers cultural upbringing in deciding religious identity, thus allowing for children with one Hindu parent to be treated as Hindu, provided they are raised within a Hindu context.

3. **Convert or Re-convert to Hinduism:**

   Anyone who converts or re-converts to Hinduism, Buddhism, Jainism, or Sikhism is considered a Hindu for the purpose of the Act. This provision respects personal autonomy, allowing individuals who have embraced Hindu beliefs or returned to the faith to be governed by Hindu law.

The term "Hindu by birth" has been interpreted by courts to clarify its application in diverse circumstances.

I. For instance, in ***Commissioner of Wealth Tax v. R. Sridharan (1976)***[2], the Supreme Court ruled that children born to Hindu parents are presumed to be Hindu by birth unless there is proof of renunciation of Hindu faith. This principle ensures that individuals retain their legal rights and responsibilities under Hindu law unless they deliberately choose otherwise.

II. Similarly, in ***Sapna v. State of Kerala (1993)***,[3] the court observed that one's mere association with another faith does not alter their status under Hindu law if they were initially considered Hindu by birth. The court emphasized that the upbringing within a Hindu family is a crucial factor in determining Hindu identity, especially for children with only one Hindu parent.

The term "Hindu by birth" under the Hindu Marriage Act, 1955, includes those born to Hindu parents, those with one Hindu parent and raised within a Hindu community, and those who have converted or re-converted to Hinduism. This definition aims to cover a broad spectrum of individuals with ties to Hinduism, ensuring that Hindu law applies to those with a natural or chosen affiliation to the religion. By considering factors like birth, upbringing, and conversion, the Act establishes a flexible yet comprehensive framework for identifying Hindus for legal purposes, thus catering to the diversity within Hindu society.

3. Is a person who reconverts to Buddhism a Hindu?

Section 2 of the Hindu Marriage Act defines the scope of the Act and specifies who is considered a Hindu. The first part of Section 2(1) establishes that the Act applies to anyone who is a Hindu by religion in its various forms, including followers of specific sects like Virashaiva, Lingayat, or Brahmo Samaj. The section also applies to individuals who follow Buddhism, Jainism, or Sikhism, recognizing them as part of the larger Hindu fold for legal purposes.

An important part of the section is the Explanation, which outlines who is regarded as a Hindu, Buddhist, Jaina, or Sikh by religion. It includes:

[2] AIRONLINE 1976 SC 2
[3] AIR 1993 KERALA 75

(a) Children, both legitimate and illegitimate, whose parents are Hindus, Buddhists, Jainas, or Sikhs by religion.

(b) Children, both legitimate and illegitimate, with one parent belonging to a Hindu, Buddhist, Jaina, or Sikh religion, who is brought up in a community, tribe, or family related to that religion.

(c) Converts or re-converts to Hinduism, Buddhism, Jainism, or Sikhism are also considered to belong to that religion.

Based on the provisions of Section 2 of the Hindu Marriage Act, 1955, a person who reconverts to Buddhism is not considered a Hindu. The question of whether a person who reconverts to Buddhism can still be considered a Hindu is complex and requires an understanding of the theological and cultural distinctions between these two religions. Buddhism, while originating in the Indian subcontinent and sharing some philosophical concepts with Hinduism, is classified as a "nāstika" tradition, meaning it does not affirm the authority of the Vedas, which are central to Hindu orthodoxy. This distinction is crucial because it highlights a fundamental divergence in belief systems, particularly regarding the nature of divinity and the role of scriptures.

Historically, Buddhism emerged as a reform movement within the religious landscape of ancient India, which was predominantly Hindu. The early Buddhist texts reflect dissent against the ritualistic practices and caste hierarchies prevalent in Hindu society at the time. This dissent is further emphasized by the rejection of the Vedic texts, which are foundational to Hindu beliefs and practices. As such, when an individual reconverts to Buddhism, they are aligning themselves with a tradition that fundamentally challenges the core tenets of Hinduism, thus complicating their identity as a Hindu.

Moreover, the identity of individuals who practice Buddhism can be influenced by cultural and social factors. For instance, in regions where both religions coexist, such as in parts of India and Southeast Asia, individuals may navigate their identities fluidly, drawing from both traditions. This fluidity can lead to a situation where a person identifies with aspects of both Buddhism and Hinduism, particularly in cultural practices and ethical teachings, such as the concepts of dharma and karma, which are shared between the two. However, this does not negate the theological differences that define the two religions.

In conclusion, a person who reconverts to Buddhism would generally not be considered a Hindu in the doctrinal sense due to the fundamental differences in beliefs regarding scriptures and the nature of divinity. However, cultural identity can be more fluid, allowing for a blend of practices and beliefs from both traditions. This nuanced understanding reflects the complex interplay between religion, culture, and personal identity in the context of South Asian religious traditions.

Several case laws have addressed similar issues, highlighting the legal stance on reconversion and religious identity.

1. *State of Bombay v. Narasu Appa Mali (1952)[4]:*

In this case, the Bombay High Court clarified that the term 'Hindu' under the Hindu Marriage Act refers specifically to those who follow Hinduism and does not include Buddhists, Sikhs, and Jains unless they are specifically mentioned in the law. This case reinforced the notion that Buddhism, while historically related to Hinduism, is legally distinct in the context of personal law.

2. *M.P. Keshava v. State of Madras (1963):[5]*

This case dealt with the issue of whether a person who converted to Buddhism would be governed by Hindu law or Buddhist law. The Court ruled that after conversion, the person is governed by Buddhist law, not Hindu law.

A person who reconverts to Buddhism is not considered a Hindu under the Hindu Marriage Act, 1955. The Act clearly defines the scope of who qualifies as a Hindu, and the re-conversion to Buddhism would classify the individual as a Buddhist. This distinction is consistent with the legal precedents and the explanation provided in Section 2 of the Act. As Buddhism is treated as a separate religion for the purposes of personal law, the legal identity of a person who reconverts to Buddhism is that of a Buddhist, not a Hindu. Thus, the reconversion leads to a change in the religious status of the individual in the eyes of the law, with all corresponding legal implications regarding marriage and other personal matters governed by the laws applicable to Buddhists.

4. **Hindu law is not 'Lex Loci' – Explain.**

Lex loci is a Latin term meaning the "law of the place". It basically means that the law of the place where something happened is the law that applies to that situation. So, if something happens in one country, the laws of that country will be used to decide what should happen next. It's like each place has its own set of rules that everyone has to follow. It is a legal principle that states that the law of the place where a legal dispute arises is the law that governs the rights of the parties involved in the dispute.

[4] AIR 1952 BOM 84
[5] AIR 1951 SUPREME COURT 128

For example, if a person is injured in a car accident while driving in California, the law of California will apply to the case. This means that the court will look to California law to determine who is at fault for the accident and what damages the injured person is entitled to.

Another example is if a contract is signed in New York but the parties involved are from different states, the law of New York will apply to the contract. This means that any disputes that arise from the contract will be governed by New York law.

Overall, lex loci is an important legal principle that helps ensure that disputes are resolved fairly and consistently based on the laws of the place where the dispute arose.

Hindu law is not lex loci. It is considered to be one of the most ancient systems of law known to the world which has developed over the time in new forms but the initial requirements and duties of Hindu law remains the same. It is also believed that Hindu law is of divine origin. Hindu law is thus a personal law. It is not lex loci (law of the land). The laws which are applicable in a territory to all persons irrespective of their caste, creed or race and religion are lex loci. Hindu law is not applicable to Parsis, Jews, Muslims and Christians. It is only applicable to Hindus. Thus, it is a personal law.

Even though most of the Hindu law is derived from ancient sources like Vedas, Manu smritis and customs but legislations have also been playing a profound role in the formation of Hindu law. After India achieved independence, some important aspects of Hindu law have been codified. These statutes are:

(a) The Hindu Marriage Act, 1955

(b) The Hindu Adoption and Maintenance Act, 1956

(c) The Hindu Succession Act, 1956

(d) The Hindu Minority and Guardianship Act, 1956

Hindu law is a personal law which means it is a category of special law. Hindu law applies only to Hindus and that too in respect to certain matters- such as marriage, adoption and maintenance, minority and guardianship, joint family, partition, submission etc. Section 2 of the Hindu Marriage Act, 1955 explains who are Hindus.

5. Will the child be Hindu in the following cases? Give reasons.

1. A child is born of Hindu mother and Sikh father.

A child born of Hindu mother and Sikh father will be a Hindu. Any person who is a Hindu, Jain, Sikh or Buddhist are Hindus by religion. When both the parents are Hindu then the child is known to be Hindu by birth. Such a child may be legitimate or illegitimate. It is not necessary that such a child does or does not profess, practice or has faith in the religion of its parents. According to Hindu law, a child is considered Hindu if they are born into a Hindu family or raised as a Hindu. It is not necessary that the child's religion is of his father. Thus, the child will be a Hindu.

2. A child is born of Hindu mother and Muslim father.

A child born of Hindu mother and Muslim father is a Hindu if the child is brought up as a Hindu. When only one parent is Hindu and the child is brought up as a member of Hindu family, he is called to be Hindu. It is not necessary that the child's religion is of his father.

In the case of ***Ram Prasad v/s Dahin Bibi***,[6] the Hon'ble Court observed that if a child is born of Hindu mother and Muslim father. The child is brought up as a Hindu. Subsequently, mother converts to Islam. The child is Hindu.

3. A child is born of Hindu parents. The child is brought up as Hindu. Subsequently, the mother converts to Islam.

A child born of Hindu parents and brought up as Hindu. Subsequently, the mother converts to Islam, this does not mean that the child's religion is also converted to Islam. The child is still a Hindu, since he was brought up as one and have not converted to any other religion. Thus, the child is a Hindu.

[6] AIR 1924 Pat. 420

II. SOURCES OF HINDU LAW

1. What are the various sources of Hindu Law? Discuss in detail.

"Hindu law has the oldest pedigree of any know system of jurisprudence, and even now it shows no sign of decrepitude"

– Henry Mayne

Hindu system of law has the most ancient pedigree of known systems of law. If the Vedic period is accepted to be 4000 to 1000 B.C, Hindu law is about 6000 years old. In this span of 6000 years, it has passed through various phases. In ancient times law was developed by custom. Hindu law is of this kind. The Vedas (shruti) were are regarded as of paramount authority. The Smritis came next in order of preference and them custom, custom even at the present day a material source of law. Hindus considered Vedas as the material source of all knowledge. Hindu law is not only divine, but also sacrosanct, inviolable and unchangeable. It cannot be questioned, challenged or violated.

It would be convenient to classify the various sources under the following two heads:

I. Ancient Sources.
   - *i) Sruti*
   - *ii) Smriti*
   - *iii) Digests and Commentaries, and*
   - *iv) Custom*

II. Modern Sources.
   - *i) Equity, justice and good conscience*
   - *ii) Precedent*
   - *iii) Legislation*

I. ANCIENT SOURCES

i) **SRUTI: -**

Hindu law is considered to be divine law, a revealed law. The theory is that some of the Hindu sages had attained great spiritual heights, so much so that they could be in direct communion with God. At some such time the sacred law was revealed to them by God

Himself. This revelation is contained in Sruti or Vedas. The word Sruti literally means "**What was heard**". The word Shruti is derived Sanskrit from the root "shru" which means 'to hear'. The srutis consist of 4 Vedas:

- Rigveda (It is of oldest origin and consists of hymns of praise of the natural forces)
- Yajurveda (It contains rituals and sacrifice mantras)
- Samveda (Contains verses to be chanted by seers)
- Atharvaveda (It is devoted to magic, spells and incantations)

Srutis also consist of 6 Vedangas (The Vedanga are auxiliary disciplines of Hinduism that developed in ancient times and relate to the study of the Vedas) and 18 Upanishads (deals chiefly with religious rites and means of attaining true knowledge or Moksha).

"The Sruti is, in theory, the primary and paramount source of Hindu law and is believed to be the language of divine revelation". As a result, it is the fundamental foundation of Hindu Law, yet it is not legally enforceable.

ii) **SMRITI: -**

Smriti literally means "what is remembered". It can be said that Smritis are a written memoir of the knowledge of the sages. The smritis are believed to have originated from divine inspiration, not as direct words from God, but as repositories of the wisdom and knowledge that sages recalled from their spiritual insights. Smriti comes from the Sanskrit word "smri," which means "to remember." Smriti, in basic terms, pertains to God's words that the sages forgot to tell in one's original form, but which the sages recalled and wrote in their own words. Smritis are of two kinds:

- Dharmasutras (Prose Style) – It consists of short statements formulating broad and general principles of common sense and justice.
- Dharmashastra (Poetry Style) - It comprises of a variety of commentaries and treatises, the smritis encompass guidance on individual duties, responsibilities, and ethical conduct within oneself, towards one's family, and as a contributing member of society.

There are various Smritis among which the notable ones are:

- Manusmriti - It is considered the most authoritative source of Hindu law. Manu, its creator, is regarded as the first human being. All of the granthas and sutras are collected in Manusmriti. It is generally accepted and respected that the latter will lose if a fight emerges between it and other smritis.
- Yajnavalkya - It appeared after Manusmriti and contained more logical and apparent views. However, it primarily dealt with civil law. Law, according to Yajnavalkya, is the king of kings, and the king's role is limited to enforcing the law
- Naradsmriti - He gave importance to regular customs. This Smriti did not deal with any religious or moral issues. It wholly concentrates on civil practices and laws.

iii) **DIGEST AND COMMENTARIES**: -

Following the smritis, the next stage in the evolution of Hindu law involves the creation of commentaries and digests that expounded upon the teachings and principles found in the smritis. "The law of the Smritis was empiric and regressive, and in the course of time, several commentaries and digests (Nibandhas) were written on it. The authority of several commentators varied in different districts, and thus arose the schools of law which are operative in different parts of India." The two schools of Hindu law are Dayabahga and Mitakshara. Moreover, it is only because of the numerous commentaries available from various authorities that these schools could evolve and be properly studied.

a. The two principal commentaries are:
    i. **Mitakshara** – A commentary on Yajnavalkya Smriti by Vijneshwara.
    ii. **Dayabhaga** – It is a treatise written by Jimutvahana which primarily focuses on inheritance procedure.

b. In ***Balwant Rao v. Baji Rao***,[7] the Privy Council held that commentaries do not enact law, but they explain and interpret the law and are the evidence of customs prevailing at the time when they were written.

iv) **CUSTOM: -**

Customs and practices have significantly influenced the development of legal systems around the world, Hindu Law as well places significant emphasis on them. In India, Custom is the most widely used and recognised source of Hindu law. Customs were valued in all of

[7] (1920) 22 BOMLR 1070

the Srutis and Smritis. However, usage is not the same as Custom since usage is a common practice. Specific basic requirements must be met for a custom to be valid, namely:

- Custom must be put into practice over a long period.
- It must not be immoral or ethically repugnant
- In some places, it is regarded as a law.
- The tradition must be consistent in its essence.
- It must also be specific and not wavering or vague.
- It must be reasonable and not in violation of any public policy or law.
- It should not be discarded.

Hindu law considers Custom to be the third source of law. Custom ('Achara') has been regarded as the ultimate 'dharma' since the beginning. According to the Judicial Committee, "custom" refers to a regulation that has gained legal force in a certain family, class, or district via lengthy usage.

These customs are of four types:

Local Customs: These are the customs that exist in a specific geographic location. In the case of ***Subbane v. Nawab***, the Privy Council stated that a custom has legal force because it has been observed for a long time in a particular location.

Family Customs: These are traditions that have been passed down through generations in a family. This applied to all families, regardless of their location. They are less complicated to abandon than other practices. The Privy Council noted in ***Soorendranath v. Heeramonie*** and ***Bikal v Manjura*** that family practises have long been recognised as Hindu law.

Caste and Community Customs: These are the traditions that a specific caste or community adheres to. It binds the individuals of such a caste or group. This is, without a doubt, among the most important legal sources. For instance, the majority of the law of Punjab is of this type. This is likewise the case with the Custom of marrying a brother's widow in several societies.

Guild Customs: These are the customs that traders adhere to.

III. MODERN SOURCES

Many changes were made to Hindu law as a result of the arrival of the British. The modern sources of Hindu law arose as a result of this. The three Modern sources are equity, fairness, good conscience; precedents and judicial decisions; and legislation.

- **JUSTICE, EQUITY AND GOOD CONSCIENCE: -**

Equity is synonymous with equitable treatment, and contemporary judicial systems largely depend on maintaining impartiality. This legal concept is firmly rooted in the principles of Justice, Equity and Good Conscience. Where the ancient sources do not explain a specific aspect, the same is governed by the principles of Justice, Equity and Good Conscience. Sometimes, a dispute may arise before a Court cannot be resolved by applying an existing rule from any accessible sources. Although such a situation is uncommon, it is feasible since not every circumstance that emerges has a matching law governing it. In the lack of law, the courts have no choice but to resolve the dispute, yet they are obligated to do so. The Courts use core values, norms, and criteria of fairness and appropriateness to decide such situations. It is referred to as the principles of justice, equality, and good conscience. Natural law is another name for them. Since about the 18th century, when the British administration made it plain that the above concept would be implemented in the lack of regulation, this concept now has the stature of a source of law in our country.

In *Gurunath v. Kamalabai (1951)*,[8] SC held that in the absence of any existing Hindu Law, Judges have the authority to decide the cases on the principal Justice, Equity and Good Conscience.

- **JUDICIAL PRECEDENT: -**

Judicial precedents too form an inseparable source of Hindu Law. The term "Precedent" means following the decision of a higher court by a lower court if the decision involves a common question of law. The SC verdicts are binding on all courts throughout India, while High Court judgments act as precedent over all courts within their respective states, unless they have been revised or amended by the Supreme Court. If there exists an important issue on which legislation is silent, the Courts throw light on such matters and define law. The pyramid of Courts was developed after the beginning of British control. The theory of precedent was formed based on the premise of treating similar cases similarly. The Privy Council's judgements

[8] 1955 SCR (1)1135

are now obligatory on all subordinate courts in India unless modified or revised by the Supreme Court. Occasionally, judicial judgements on Hindu law are referred to be a source of law

In ***Luhar Amritlal Nagji v. Doshi Jayantilal (1960)***,[9] the Supreme Court has noted that judicial pronouncements have become an integral component of Hindu law, effectively altering and enhancing the original Hindu legal framework, thus evolving into significant sources of contemporary Hindu Law.

- **LEGISLATION: -**

Legislation, also known as the codified form of law, is also considered as a modern source of Hindu law. Prior to legislative enactments, different rules and practices were prevalent in different parts of the country. Legislation becomes a necessity not only to attain uniformity of law but also to abrogate inhuman and irrational practices.

Examples of important legislations on Hindu Law are:

- The Child Marriage Restraint Act, 1929
- The Hindu Marriage Act, 1955,
- The Hindu Adoptions and Maintenance Act, 1956,
- The Hindu Succession Act, 1956,
- The Hindu Minority and Guardianship Act, 1956, etc

Hindu law has been regarded as a divine code crafted by sages or individuals claiming direct communication with the divine power. In reality, the sources of Hindu law in India are rooted in ancient texts, customs, legal precedents, and legislative acts. These sources form the fundamental basis for the legal structure governing diverse facets of Hindu personal law.

2. What are the requisites of a valid custom? What are the kinds of custom?

Definitions

John Salmond – "Custom is the embodiment of these principles which have commended themselves to the national conscience as principles of justice and public utility".

[9] AIR 1960 SUPREME COURT 964

For Salmond, a valid custom has absolute legal authority which as the force of law in herself. He divides Customs into two;

1. General Custom
2. Local Custom

C.K. Allen- "legal and social phenomenon growing up by forces inherent in society- forces partly reason and necessity, and partly of suggestion and imitation."

J.L. Austin – "Custom is a rule of conduct which the governed observe spontaneous and not in pursuance of law settled by a political superior"

Robert Keeton- "Customary law may be defined as those rules of human action established by usage and regarded as legally binding by those to whom the rules are applicable, which are adopted by the courts and applied as source of law, because they are generally followed by the political society as a whole, or by some part of it".

Custom can simply be defined as long-standing customs or unwritten regulations that have taken on a binding or compulsory status. Valid custom must be of immemorial antiquity, certain and reasonable, compulsory, and not in conflict with Statute Law, even if it deviates from the common law.

Each and every custom cannot be legally enforced. Before they may have the power of law, they must be proven in court, just like anything else. Some judicial standards have arisen in order for custom to be legally recognised by the courts and gain the binding force of law.

1. **Reasonable**

A custom must be reasonable. Its authority is not absolute, but conditional on certain measure of conformity with the prevailing view of usefulness, justice and public policy. It is reasonable if found to be in consonance with reason and its origin and continuance are capable of being explained. Thus, the 'sati pratha' could not take the place of a legal Custom due to its being repugnant to the logical sense of justice and goodness in man. A custom of burying or cremating the dead bodies of the people of the locality on an abandoned land is not unreasonable. It is however, not necessary that in order to be reasonable, a custom must fulfill the test of absolute rectitude and wisdom. The true rule is, observes Salmond that a custom in order to be deprived of legal efficacy must be so obviously and seriously repugnant to right and reason, that to

enforce it as law would do more mischief than that which result from the overturning of the expectations and arrangements based on its presumed continuance and legal validity.

2. **Conformity with statue law**

No custom or prescription can take away the force of an Act of Parliament. Statutory law is Supreme and no length of desuetude can affect its efficacy. The custom in order to be a source of law must not, therefore, conflict with statute law.

3. **Observance as of right**

It must have been observed as of right. Mere practice of a voluntarily nature would not make a custom valid. It must have been followed openly not stealthily, and without the necessity for the recourse to force. To use the expression of Salmond, there must be *opinio necessitatis* , that is, the conviction on the part of those who use a custom that it is obligatory ands not merely optional. ***Jessel, M.R***. Observed that if the disturbance or interruption of an alleged custom has existed for any considerable period, a strong presumption arises that there never was any such custom at all.

4. **Certainty**

A custom must be certain and the court must Satisfied by Clear and unambiguous proof that the custom exists as a matter of fact or legal presumption of fact. A custom, however ancient, must not be indefinite and uncertain, and as ***Willes C.J.*** observed in ***Broadbent vs. Wilkes (1742) Willes,360.*** " a custom must be certain because, if it be not certain it cannot be proved to have been time out of mind, for how can anything be said to have been time out of mind when it is not certain"

5. **Consistency**

Further, Custom must be consistence with each other that these may operate as a source of law. A custom to be valid must be such that, in the opinion of a trained lawyer, it is consistent, with those general principles which, quite apart from particular rules or maxims, lie at the root of our legal system.

6. **Immemorial antiquity**

Recent and modern custom is of no account. It must have been observed for such a long time that " the memory of man runneth not to contrary ". In other words, it must be immemorial antiquity, i.e., its origin is so ancient that to living man can testify its beginning.

7. **Continuity**

Only that custom is valid which has been continuously observed without any interruption from time immemorial. If a custom has not been followed continuously and uninterruptedly for a long time, the presumption is that it never be exist.

8. **Must be a peaceable one**

The enjoyment of a custom must be a peaceable one. If that is not so, consent is presumed to be wanting in it.

9. **Must not be opposed to Public Policy**

A valid custom must not be opposed to public policy or the principles of morality.

10. **Must be General or Universal**

The custom must be general or universal. According to ***Carter*** " Custom is effectual only when it is universal or nearly so. In the absence of unanimity of opinion, custom becomes powerless, or rather does not exist.

CLASSIFICATION OF CUSTOM

Custom can be classified into two types:

1. Custom without sanction, and
2. Custom having sanction.

Custom having sanction can be further classified into two types:

i. Legal Custom, and
ii. Conventional Custom.

Legal Custom can be further classified into two types:

a. General Custom, and
b. Local Custom.

1. **CUSTOM WITHOUT SANCTION:** These are those customs which are non-obligatory. They are all observed due to presence of the public opinion. Austinian term for them is positive morality
2. **CUSTOM HAVING SANCTION:** These are those customs which are enforced by the State. These customs are backed by sanction.

These customs have two types which are as follows:

i. Legal custom; and
ii. Conventional custom

LEGAL CUSTOM: - The legal customs are those whose legal authority is absolute and unconditional. These customs operate as a binding rule of law. They have been recognized by the courts and have become a part of the law of the land. They are enforced by the courts.

CONVENTIONAL CUSTOM: -A conventional custom is also called "usage". It is an established practice whose authority is conditional on its acceptance and in corporation in the agreement between the parties bound by it. In simple words, a conventional custom is conditional and condition is that it will be binding on the parties only, if it has been accepted and incorporated by them in their agreement. A conventional custom is binding on the parties not because of any legal authority, but because of the fact that it has been expressly or impliedly incorporated in a contract between the parties concerned. When two parties enter into contract, generally whole terms of the agreement are not set out expressly and a large part of most contracts is implied. The intention of the parties to the contract can be gathered from the customary law prevalent in the trading community. A conventional custom may either be local or national. In order to acquire the status of law, a conventional custom must also fulfil the essentials of a valid custom. That is, it must be immemorial, it should not contrary to the statute law, it should be reasonable, and must be in conformity with morality and public policy.

There is an important point to mention here that in ***Asarabulla v. Kiamtulla,*** it was held that a conventional custom or usage which is contrary to any express condition laid down in a contract shall not be enforceable by law.

Legal customs are of two types: -

a. Local custom
b. General custom

LOCAL CUSTOM: -

A local custom is that which prevails in some defined locality, that is, to a district, town or an area. But they do not imply geographical locality only. Sometimes, certain sects or families take their customs with them wherever they go. They too are called local customs. Therefore, in India, local customs may be divided into two classes; Geographical local custom' and personal local custom. These customs are law only for a particular locality, set or family.

Halsbury defined local custom as a particular rule which has existed actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although it is contrary to or not consistent with the common law of the realm." A local custom to be valid should be sustain, reasonable, continuous, and permanent and should not be contrary to any existing law.

GENERAL CUSTOM: -

A general custom is that which prevails throughout the country and constitutes one of the sources of the law of the land. There was a time when common law was considered to be the same as general custom of the realm followed from ancient time, but today it is not so. Now only the statute law passed by the British parliament and precedents are regarded as the sources of common law. According to Keeton, 'a general custom must also satisfy certain conditions if it is to be a source of law'. It must be reasonable, followed and accepted as binding, should not be in conflict with the statute law of the country and must be in existence from the time immemorial.

3. Explain Equity, Justice and Good Conscience as a Source of Hindu Law.

Justice, Equity and Good Conscience

Another significant source of Hindu law in India is the principle of justice, equity, and good conscience. This principle is based on the concept of natural justice and is often invoked by courts in cases where there is no specific provision in the ancient texts, customs, or statutory laws to address a particular issue.

The principle of justice, equity, and good conscience allows courts to exercise their discretion and interpret and apply Hindu law in a fair and just manner, taking into account the facts and

circumstances of each case. This principle is particularly relevant in cases where existing laws may not adequately address modern social, economic, or cultural changes.

For example, in cases where there is no clear guidance on matters such as maintenance for divorced wives, property rights of illegitimate children, or the adoption of a child born out of wedlock, courts have relied on the principle of justice, equity, and good conscience to arrive at decisions that are fair and just.

It is important to note that the principle of justice, equity, and good conscience is not a standalone source of Hindu law, but rather a guiding principle that complements and supplements the other sources mentioned earlier. It is often used as a fallback option when other sources are silent or inadequate in addressing a particular legal issue.

Judicial Precedents: Case Laws and Judicial Interpretation

Judicial precedents, also known as case laws, are another important source of Hindu law in India. Judicial precedents are the decisions of courts in cases involving Hindu law, which are considered as authoritative interpretations of the law. The decisions of higher courts, such as the Supreme Court of India, have a binding effect on lower courts, and they are considered as precedents that are to be followed in similar cases. Judicial precedents play a significant role in the development and evolution of Hindu law, as they provide interpretations and clarifications on legal principles and practices.

Over the years, the Indian judiciary has delivered numerous landmark judgments on various aspects of Hindu law, including marriage, divorce, property rights, inheritance, adoption, and religious practices.

These judgments are considered as important sources of Hindu law and have shaped the legal framework for Hindus in India.

For example, the Supreme Court of India clarified the rights of a Hindu woman as a coparcener in a joint Hindu family property.

Another example can be, in the case of ***Mohd. Ahmed khan v. Saha Bano Begum***[10] the court established the rights of Muslim women to maintain under Hindu law.

Judicial precedents are based on legal principles, statutes, and customs, and they provide guidance on the interpretation and application of Hindu law in contemporary times. They help

[10] 1985 SCR (3) 844

in filling the gaps in the legal framework and adapting the law to changing societal needs and values. Judicial precedents are cited and relied upon by courts in subsequent cases to ensure consistency and uniformity in the application of Hindu law.

Legislative Enactments: Statutory Laws

Legislative enactments, or statutory laws, are another important source of Hindu law in India. The Indian Parliament and state legislatures have enacted various laws that govern different aspects of Hindu personal law. These laws are based on constitutional principles, social policies, and contemporary needs, and they provide a comprehensive legal framework for Hindus in India.

Some of the important statutory laws that are sources of Hindu law include:

- **Hindu Marriage Act, 1955:** The Hindu Marriage Act is a central legislation that governs the solemnisation, registration, and dissolution of marriages among Hindus, Buddhists, Jains, and Sikhs. It provides for the conditions for a valid Hindu marriage, the rights and duties of spouses, and the grounds for divorce and judicial separation. The Act also deals with issues such as maintenance, custody of children, and property rights of married couples.
- **Hindu Succession Act, 1956:** The Hindu Succession Act is a central legislation that governs the inheritance and succession of property among Hindus, Buddhists, Jains, and Sikhs. It provides for the rules of intestate succession, i.e., succession in case of death without a valid will, and testamentary succession, i.e., succession based on a valid will. The Act also provides for the rights of female heirs, coparcenary rights, and rules related to joint family property.
- **Hindu Minority and Guardianship Act, 1956:** The Hindu Minority and Guardianship Act is a central legislation that deals with the minority and guardianship of Hindu minors. It provides for the rights and liabilities of minors, the appointment and powers of guardians, and the duties and responsibilities of guardians towards the minors' welfare and property.
- **Hindu Adoption and Maintenance Act, 1956:** The Hindu Adoption and Maintenance Act is a central legislation that governs the adoption and maintenance of Hindus. It provides for the rules and procedures for adoption, the rights and duties of adopted children and adoptive parents, and the maintenance rights of Hindu women, children, and aged parents.

- **Customary Laws:** In certain regions of India, Hindus also follow customary laws that have been codified and recognized by local legislation. For example, in some states like Goa, the Goa Family Law, which is based on Portuguese civil law, applies to Hindus for matters related to marriage, divorce, inheritance, and succession.

4. Write a note on Dharmashastras. How does it differ from Dharmasutras?

Dharma-shastra, ancient Indian body of jurisprudence that is the basis, subject to legislative modification, of the family law of Hindus living in territories both within and outside India (e.g., Pakistan, Malaysia, East Africa). Dharma-shastra is primarily concerned not with legal administration, though courts and their procedures are dealt with comprehensively, but with the right course of conduct in every dilemma. Some basic principles of Dharma-shastra are known to most Hindus brought up in a traditional environment. Those include the propositions that duties are more significant than rights, that women are under perpetual guardianship of their closest male relatives, and that the king (i.e., the state) must protect the subjects from all harm, moral as well as material.

- **Dharmasastra** refers to the treatises on dharma, a genre of Sanskrit literature on law and conduct.
- There are several **Dharmashastras,** ranging in number from 18 to roughly 100, each with different and sometimes contradictory viewpoints.
- Each of these writings has a number of different forms, but they are all based on Dharmasutra manuscripts from the first millennium BCE that originated from **Vedic Kalpa** research.
- The **Dharmasastra literary** corpus was created in poetry verses, and is part of the Hindu Smritis, containing a variety of comments and treatises on one's obligations, responsibilities, and ethics to oneself, family, and society.
- The texts cover **ashrama (life stages), varna (social classes), purushartha (right life aims)**, personal virtues and duties including **ahimsa (nonviolence)** against all living beings, just war regulations, and other topics.
- Dharmasatra became influential in modern colonial India history when it was formulated by early **British colonial administrators** to be the law of the land for all non-Muslims in

South Asia, after Sharia, i.e. **Emperor Muhammad Aurangzeb's Fatawa-e-Alamgiri,** had already been accepted as the law for Muslims in colonial India.

- **Dharmasutras and Dharmashastras** are the two types of **Smritis.** Their subjects are nearly identical.
- The Dharmasutras are written in prose as brief **maxims (Sutras)**, whereas the Dharmashastras are written in **poetry (Shlokas).**
    - Dharmasutras and Dharmashastras. Their subject matter is almost the same. The difference is that the Dharmasutras are written in prose, in short maxims (Sutras) and the Dharmashastras are composed in poetry (Shlokas). In a narrow sense, the word Smriti is used to denote the poetical Dharmashastras.
    - Dharmasutras were mainly in the form of training manuals to teach Dharma to the students.
    - Dharmashastras were based of Dharmasutras. They dealt with the subject matter in three parts:
        i. Aachara: Theories of religious observances,
        ii. Vyavahar: Civil law and
        iii. Prayaschitta: Penance and expiation

5. Distinguish between Mitakshara Coparcenary and Dayabhaga Coparcenary.

Daya Bhaga Coparcenary: In the Dayabhaga system does not recognize the concept of coparcenary in the same way as the Mitakshara system. Instead, all family members, including daughters and widows, have equal rights to inherit property. In the Dayabhaga system, the ownership of ancestral property is not divided among coparceners, but instead passes to the heirs of the deceased in equal shares.

Mitakshara Coparcenary: On the other hand, Mitakshara system, coparcenary is an automatic right acquired by birth for male members of a joint Hindu family. It is based on the principle of survivorship, meaning that when a coparcener dies, his share automatically passes to the surviving coparceners.

The Mitakshara system recognizes ancestral property, which is property inherited from a male ancestor, as coparcenary property.

	DAYA BHAGA COPARCENARY	**MITAKSHARA COPARCENARY**
Definition	It is a system of property inheritance prevalent in West Bengal and Assam.	It is a system of property inheritance prevalent in most parts of India
Coparceners	Only male descendants up to four degrees from the holder of the property can be coparceners.	Male descendants up to any degree from the holder of the property can be coparceners
Female Inheritance	Female heirs do not have an equal right to inherit property. They have limited inheritance rights and can only inherit in certain circumstances.	Female heirs have an equal right to inherit property along with male heirs
Property Partition	The holder of the property can partition it as per his wish during his lifetime, and such partition is considered valid.	The holder of the property cannot partition it during his lifetime without the consent of all coparceners.
Ancestral Property	Ancestral property is not recognized under Daya Bhaga law.	Ancestral property is recognized, and all coparceners have an equal right to it.
Devolution of Property	Property devolves as per the rules of succession laid down in the Hindu Succession Act.	Property devolves as per the rules of succession laid down in the Mitakshara school of Hindu law.

6. Discuss the origin, concept and nature of Hindu law.

Hindu law is an ancient legal system that is rooted in religious scriptures, customs, and legal precedents:

The Origin of Hindu Law

Hindu law, which derives from the Vedas and other sacred texts, is seen as having divine origins. It is thought that sages or people who professed to have direct touch with God are the ones who taught these lessons.

Scholars have contested the origin of Hindu law, also known as Dharmashastra. Two major hypotheses present opposing viewpoints on the origins of Hindu law. Let us investigate these theories in depth.

- **Divine Origin Theory**

The first theory holds that Hindu Law has a divine origin, granted by the Almighty God. It is thought to have started with the Vedas, which are regarded as God's divine revelation. The Vedas are ancient writings that include songs, rites, and philosophical teachings. The law generated from the Vedas is considered independent of the state and has equal legal authority for both the king and the subjects. This idea emphasizes the divine essence of Hindu law, which is commonly known as Apauruseya.

- **Customary Origin Theory**

The second argument holds that Hindu law is based on ancient customs, sacred texts, and scriptures that predate Brahmanism. It implies that the indigenous people had customs and usages prior to the Aryan invasion, and that some of these practices were later absorbed into Hindu Law. The Aryans, who brought their own customs and practices, incorporated some existing customs into their legal system, resulting in the development of Hindu law. It is worth noting that the Aryans did not recognise or approve some customs and practices, such as polyandry and incestuous marriage.

Concept

The foundation of Hindu law is the idea of dharma, which directs people in carrying out their obligations and rights. By abiding by dharma and carrying out good activities, one can attain salvation through rebirth, according to Hindu law.

Nature of Hindu Law

Hindu law differs from contemporary state law in that it is regarded as an edict from the Almighty that equally governs rulers and subjects. With a roughly 6,000-year history, it is also regarded as the most ancient and widespread legislation in the world.

The nature of Hindu Law can be understood through various aspects discussed below.

- **Dharma as the Supreme Authority**

The Supreme Authority is Dharma. Hindu jurisprudence holds that the law is an adherence to the Supreme authority, known as "Dharma," rather than merely a directive from the sovereign. The tenet that directs people's behaviour and obligations is dharma. It offers a path to salvation that people, monarchs, and subjects can all follow. Hindu law places a strong focus on upholding one's obligations and rights in conformity with Dharma.

- **The Role of Brahmins in Legislation**

Hindu law recognizes the significant influence of Brahmins in the legislative process, but without enshrining the directives of a monarch. In the past, the Brahmins had ultimate legislative authority and were regarded as the Hindu community's absolute rulers. In general, the populace complied with the Brahmins' orders. As a result, the Brahmins were instrumental in forming and interpreting Hindu law.

- **Smritis and Sanskrit Commentaries**

The Smritis, ancient religious writings that offer rules for social mores, legal precepts, and personal behaviour, are the main source of Hindu law. Hindu law is based on the law as it is stated in the Sanskrit Commentaries and Digests as well as on customary practices. Evolving traditions and conventions frequently add to and alter these texts.

- **Continuity and Progression**

With a long and illustrious history, Hindu law is regarded as one of the world's oldest legal systems. It has consistently changed and adjusted to the shifting dynamics and needs of society. Despite its ancient beginnings, Hindu law has proven remarkably resilient and is still applicable today. In the ***Mookka Kone v. Amma Kutti***[11] case, the Privy Council acknowledged that Hindu law is dynamic and ever-evolving while upholding its fundamental principles.

[11] AIR 1928 MADRAS 299

- **Application by Courts**

Courts administer Hindu law by interpreting and applying its tenets in cases involving legal disputes. When deciding cases pertaining to Hindu law, courts consult the Smritis, Sanskrit Commentaries, Digests, and customary practices. The courts make sure that justice is administered in conformity with the spirit and character of Hindu law and that the tenets of Dharma are respected.

Sources

Hindu law is derived from ancient writings, traditions, court rulings, and legislative actions. When there was no other legislation in place, customs were thought to be the most practical way to complete a task.

Evolution

Hindu law has changed over time to accommodate society's shifting demands. Its distinctiveness is influenced by the Brahmins' involvement in legislation, the courts' use of Hindu law, and their reliance on Smritis and Sanskrit Commentaries.

The nature of Hindu law is strongly based in Dharma, which guides people in carrying out their rights and duties. It is an ancient legal system that has evolved over time to satisfy society's evolving demands. The Brahmins' influence in legislation, dependence on Smritis and Sanskrit Commentaries, and court application of Hindu Law all contribute to its uniqueness. Despite its age, Hindu Law remains an important and active legal system that reflects India's rich cultural past.

7. SHORT NOTE:

i. Dharma

Concept of Dharma

We know that the word Dharma refers to Hindu law. Let me clarify. In Hindu mythology, the word "Dharma" means "duty". Looking at the contextual and religious allusions, Dharma has varied meanings. For example, Buddhists feel that the word Dharma implies simply a global law that is extremely important, whilst Jains and Sikhs believe that it is only a religious route for the victory of the truth. According to Hindu law, Dharma refers to duties in a variety of

ways. Just like sociological, legal, or spiritual duties. In this context, we can refer to Dharma as the notion of Justice.

Sources of Dharma

God produces life utilising Dharma principles, as stated in the "Bhagvad Geeta". They are patience, forgiveness, self-control, honesty, holiness (cleanliness in the mind, body, and soul), sense control, reasoning, knowledge, truthfulness, and the lack of wrath. According to Hinduism, "Moksha" (salvation) is the eternal Dharma for people. Hindu epics such as the Ramayana and Mahabharata also mention Dharma. They claim that executing one's Dharma is the proper goal for every individual. And, at the time, the king was known as Dharmaraj since his major goal was to follow the path of Dharma.

Nature of Dharma

In contrast to other schools of law, Hindu law focuses on obligations rather than rights. The nature of these Dharmas varies from person to person. Many people in our world have many duties, such as the king's duty to uphold religious law, while a farmer's duty is to create food, a doctor's duty is to cure the sick, and attorneys must fight for justice. Dharma, as a religious idea, has several facets. It has numerous rules and conventions governing a wide range of areas that must be observed by all individuals. For example, Manusmriti discusses religion, administration, economics, civil and criminal law, marriage, succession, and so on.

ii. Lex - loci

Lex loci is a Latin phrase that means "law of the place." It refers to the notion in legal theory and practise that the law governing a specific issue or dispute is governed by the jurisdiction in which the issue arises or the circumstances leading up to the dispute occurred. In essence, lex loci states that the legal norms and principles that apply to a case are those of the geographical location where it occurred. The concept of lex loci is deeply ingrained in both civil and common law systems, and it is critical to the operation of legal systems worldwide. Understanding lex loci entails investigating its use in diverse legal contexts, its significance in legal conflicts, and its restrictions and exceptions. Lex loci is important in legal disagreements that develop when various jurisdictions with different laws are involved. In such circumstances, knowing which jurisdiction's laws apply is critical for settling the issue.

Lex loci gives a starting point for evaluating legal problems by establishing the fundamental idea that the law of the place applies to the circumstance. For example, in contract law, the

validity, interpretation, and enforcement of a contract are often determined by the law of the country in which the contract was created or where performance is required. Similarly, in tort law, the legal rules for establishing responsibility and damages are usually based on the legislation of the jurisdiction in which the tortious behaviour occurred. In the framework of International Law, Lex loci is used to determine the appropriate legal norms in circumstances involving cross-border transactions, disputes, or occurrences. International treaties and conventions frequently use lex loci as a guiding principle for settling legal problems between sovereign governments.

However, lex loci is not an absolute rule; there may be exceptions and restrictions. One such exception is the principle of party autonomy, which permits parties to specify the governing law of their contract via a choice of law clause. In such instances, the parties' intentions regarding the appropriate law trump the principle of lex loci. Furthermore, certain legal matters may involve public policy concerns that justify departing from lex loci and instead using the law of another state. For example, a court may decline to follow local law if doing so would violate basic rights or legal principles. Furthermore, conflicts of law can become more complex when many jurisdictions have a major connection to the legal issue, or when different jurisdictions' laws disagree with one another.

In such cases, courts may use choice of law or conflict of law considerations to determine which law is best suited to govern the dispute. Lex loci also intersects with other conflict of law doctrines, such as the doctrine of renvoi, which refers to when a court uses another jurisdiction's conflict of law standards to decide the relevant law. Renvoi can complicate conflict of law analysis by adding new layers of legal interpretation and decision. In conclusion, lex loci is a key principle in legal theory and practice that establishes the appropriate law based on the jurisdiction in which the legal issue arises or the relevant events transpired. While lex loci provides a broad guideline for resolving legal conflicts, it is susceptible to exceptions and restrictions, and conflicts of law analysis may necessitate the inclusion of additional principles and elements.

iii. Smriti

- Smriti literally translates to "what is remembered". Smritis can be described as a written chronicle of sages' knowledge.

- The smritis are thought to have arisen from divine inspiration, not as direct utterances from God, but as repositories of wisdom and knowledge gleaned from sages' spiritual insights.
- Smritis are of two types:
  - Dharmasutras (Prose Style) - It comprises brief remarks that express broad and comprehensive concepts of common sense and fairness.
  - Dharmashastra (Poetry Style) - It consists of a number of commentaries and treatises that provide direction on individual obligations, responsibilities, and ethical behaviour inside oneself, towards one's family, and as a contributing part of society.
- The most notable Smritis include
  - Manusmriti.
  - Yajnavalkya.
  - Narada Smriti.
  - Parashar Smriti.

Smriti as a source of law

Smriti is derived from "smriti" which means to remember. Smritis are those portions of shrutis that the sages forgot to tell in their original form, Therefore, they wrote down in the language that they were familiar with, hence shrutis are considered Be the foundation of smritis. There are two types of smritis: The first is Dharmasastras, whereas the second is Dharmasutras. Dharmasastras provide the rules about A moral rule of conduct for Hindus, The Dharmasutras contain rules regarding Government, caste, people's relationships, Economic issues, dietary habits, etc. There are numerous. Only the two most well-known smritis can be counted. The smritis are Yajnavalkya smriti and Manusmriti. Manusmriti is also regarded as the first law book. Manu wrote this.

iv. Digests and commentaries

The third most important source of law is the digests and the commentaries written by various authors of Hindu law. Commentaries generally comment on the smritis, the area of commentaries is from the 7th century to 1800 AD. Commentaries also laid the foundation of various schools of Hindu law. Digests contain the important aspects of all the smritis and discussed their reconciling and contradictions. Various digests and commentaries have been

written by various authors on the two most famous smritis that is manusmriti and yajnavalkya smriti namely.

On Manusmriti:

i. Medhatithi wrote Mahabhasya.
ii. Govind Raja has contacted Manuka.

On Yajnavalkya.

i. Vigneshwara wrote the well-known commentary on Mitakshara.
ii. Arpaka wrote Aparaditya.

Digest and commentaries

- Following the smritis, the next stage in the formation of Hindu law is the creation of comments and digests that expand on the teachings and ideas found in the smriti.
- The two main commentaries are:
  -Mitakshara is Vijneshwara's commentary on the Yajnavalkya Smriti.
  -Dayabhaga - A book written by Jimutvahana that largely discusses inheritance procedures.
- In Balwant Rao v. Baji Rao (1921), the Privy Council ruled that commentaries do not enact legislation, but rather explain and interpret it, as well as provide evidence of conventions in place at the time they were written.

v. Conversion

In family law, conversion to another religion can impact a marriage in the following ways:

- **Divorce**

The Hindu Marriage Act of 1955 (HMA) allows a spouse to seek a divorce if the other spouse converts to another religion without their consent. This is defined in Section 13(1)(ii) of the HMA.

- **Conversion to Jainism, Buddhism, or Sikhism**

A person who converts to these religions remains a Hindu and is covered by the HMA.

- **Conversion to other religions**

A person who converts to a non-Hindu religion, such as Islam, Christianity, or Zoroastrianism, is considered to have "ceased to be Hindu".

- **Informed consent**

The process of religious conversion for marriage should ensure that the individual understands the conversion and consents to it.

- **Judicial power**

The judiciary can examine existing legislation on marriage and conversion, but it cannot create new legislation or interfere with the law-making process.

- **Legal rights and duties**

The HMA recognizes converts and reconverts to Hinduism as Hindus, and their legal rights and duties are the same as those of Hindus by birth.

8. The concept of Hindu law is deeply rooted in Hindu philosophy and Hindu religion.

Hindu Law is considered to be one of the most ancient laws. Hindu Law is considered to be about 6000-year-old. In this span of 6000 years, it passed through various phases. The concept of Hindu Law is deeply rooted in Hindu philosophy and connected with "Religion" i.e. "Dharma". Though since ancient time Hindu Law has underwent various ups and downs but basic principles of Hindu Law remained unaffected during its thousand’s years of existence in Hindu society.

Hindu Philosophy and Religion Hindu Law is deeply connected with religion or "Dharma". Origin of Hindu Law is primarily based on "Religion". Religion or "Dharma" is a wide expression and means aggregate of duties and obligations which a man has to observe morally, socially and legally. Hindu religion is based on the philosophy, that soul-is-immoral, a man dies but his soul does not die, chain of birth and re-birth continues till a man attains "moksh" i.e. Salvation. All activities of human being, according to Hindu philosphy are aimed for attaining "moksh" and for that purpose "Religion" lays down certain modes of activities for ultimate purpose of attaining Salvation.

Law, according to Hindu jurists, is the enforceable part "Dharma" or "Religion". According to Mannu "the Vedas", the smriti, the approved usage and what is agreeable to one's soul or good

conscience are the quadruple direct evidence of Dharma." About the nature and scope of Hindu Law, Dr. Jullius Jolly stated that-

"The Indian soil has not only been productive in deep thinkers, eminent founders of world religions and gifted poets, but it has brought forth a system of law, which after having spread in the whole vast continent of India, has generated at an early period into Burma and Siam and has become the foundation of the written law in these two countries."

- **Dharma**

The concept of dharma, or righteous obligation and moral responsibility, serves as the foundation of Hindu law. Dharma is a comprehensive term that refers to the moral, social, and legal requirements that a Hindu must fulfil.

- **Ancient texts**

The Dharma Shastras, ancient books penned by sages such as Manu and Yajnavalkya, serve as the foundation for Hindu law. These works established guidelines for social norms, legal principles, and ethical behaviour.

- **Supreme authority**

According to Hindu jurisprudence, the law is based on dharma, or highest power, rather than a decree from the sovereign.

- **Svadharma**

Every individual has a svadharma that is determined by their varna (social class) and israma (stage of life). Svadharma governs all areas of a person's existence, including their diet, how they spend their time, and their interactions with supernatural powers.

Hindu law is often referred to as Dharmashastra. It has one of the most extensive continuous histories of any legal system. However, in the 18th century, the British adopted their own interpretation of Hindu law in Anglo-Indian courts, and in 1955-6, the Indian Parliament overruled the majority of traditional Hindu law.

III.THE HINDU MARRIAGE ACT, 1955

1. According to the nature of Hindu Marriage, is it a sacrament or a contract? Give reason.

The Hindu marriage act of 1955 has reformed the marriage according to Hindu law. It is considered as a landmark in the history of social legislation. Also, this law has not only codified Hindu marriage law. It has also introduced many important changes in many aspects.

The concept of marriage is to establish a relationship between husband and wife. Based on Hindu law, the marriage is a sacred tie and last of ten sacraments that can never bebroken. Based on **Smritikars** even death cannot break this relationship. A Bench of ***Justices B.V. Nagarathna and Augustine George Masih*** said "a Hindu marriage is a 'samskara' and a sacrament which has to be accorded its status as an institution of great value in Indian society."[12]

Also, it is not only considered as sacred but it is also a holy union. The main objective of marriage is to enable a woman and a man to perform their religious duties. Along with this, they also have to beget progeny. Based on ancient writings, a woman is considered half of her husband and thus completes him. While a man is also considered incomplete without a woman.

Every Hindu whether they are male or female has to marry. Also, a person could not remain a perpetual student and where he did not desire for an ascetic life. But he was enjoyed or engrained in the shashtra to marry.

Since time immemorial, marriage has been the most important of all the institutions of human society. It has always existed in one form or another in all cultures, ensuring the social sanction of the physical union between man and woman and laying the foundations for the construction of the family, the basic unit of society. Hindu marriage refers to kanyadan, which means that the father presents a girl to the boy with all the tradition and rites or customs. Hindu marriage is an ancient tradition prevailing from the Vedic periods to the modern world with different modifications that have occurred up to now. There are16 sacraments in Shastri Hinduism in which marriage is one of the important sacraments of Hinduism.

[12] Dolly Rani v. Manish Kumar Chanchal 2024 INSC 355

Polygamy and polyandry prevailed during ancient times. Polygamy was sanctioned by the old legislators in certain chosen circumstances, such as sterility or lack of religious mentality, that is, if the wife was not fit to participate in the performance of her husband's religious rites. The husband had the right to remarry if the wife did not give birth to a male child. Polygamy was popular with the Kshatriyas. As time went by, polygamy and polyandry were gradually replaced by monogamy as a social norm, but bigamy in one form or another is still seen in society. With the evolution of civilization, marriage came to be recognized as a religious, holy, and sacramental bond, and the wife regained a respectable member in the home. The Vedic literature generally endorsed monogamy and it was considered the best practice of the highest virtue.

Marriage As a Sacrament:

The three characteristics of the sacramental nature of marriage are:

- It is a lasting bond between husband and wife that is permanent and linked even after death and they will remain together after death.
- Once it is tied, it cannot be untied.
- It is a religious and sacred union of the bride and groom that is necessary to carry out through religious ceremonies and rites.

A Hindu marriage is considered a religious sacrament mainly because only when religious rites are performed would it signify a valid and complete marriage. Section 5 of the Hindu Marriage Act talks about the mental capacity of the parties. It states very clearly that neither party should be incapable of giving valid consent. Additionally, it states that the groom must have reached the age of twenty-one and the bride must have reached the age of eighteen at the time of marriage. According to Sec. 12 of the Hindu Marriage Law, a marriage of a minor or a sick person is voidable and not void.

- In ***Tikait v. Basant*** [13]***[6 Bengal Law Reporter, 243]***, the court held that marriage under Hindu law was a sacrament, an indissoluble union of flesh to flesh, bone to bone that would continue even in the next world.
- The court in ***Shivonandh v. Bhagawanthuma***[14] held that marriage was binding for life because a marriage performed by saptapadi before the consecrated fire was a

[13] (1901)ILR 28CAL751
[14] 2006 (2) SCC578

religious bond that could never be separated. The Calcutta High Court also observed that a Hindu marriage is "more religious than secular in character".

Marriage as a Contract:

- The Court in ***Muthusami v. Masilamani***[15] held that a marriage, whether a sacrament or institution, is undoubtedly a contract entered into for consideration, with co-relative rights and duties.
- In ***Purushottamdas v. Purushottamdas***[16] , the court held that the marriage of Hindu person is a contract made by their parents.
- In ***Bhagwati Saran Singh v. Parmeshwari Nardar Singh*** [17], the court referred the Hindu Law of Macnaghten, the Hindu Law of Starnages and Vyawastha Chandrika and finally expressed the opinion that Hindu marriage was not only a sacrament but also a contract.

Also, Kanyadan meets the requirement of a gift under Hindu law. Therefore, it is a contract. But Section 12 of the Hindu Marriage Act of 1955 states that when consent is not obtained, the marriage is considered void. It shows that despite the absence of the bride's consent, the marriage is valid and legal. The nature of modern marriage is contractual. Therefore, it accepts the idea of equality and freedom. It has been adopted due to western ideas. There must be a voluntary participation agreement by both parties. Therefore, Hindu marriage is neither a contract nor a sacrament. But it can be said that it is a mixture of both.

Marriage as A Sacrosanct:

Marriage in the Hindu religion is a sacrosanct and holy union of two individuals. There are various ceremonies, according to the different castes, that are essential for a marriage to be solemn. Some of these ceremonies and traditions are now codified in the Indian legal system as customs.

The marriages were governed as per the customs of people belonging to the Hindu religion and in the year 1955, the Hindu Marriage Act was enacted to deal with matters related to Hindus. In the year 1956, the legislature enacted a lot of laws for governing subjects such as custody, maintenance, marriage, divorce, guardianship of minors, transfer of the ancestral property to the legal heirs, etc.

[15] [5 IND.CAS.42]
[16] 21 Bom 23]
[17] 1942 ILR All. 518]

The Hindu Marriage Act was enacted to protect the rights of the parties to a marriage. The law does not specify a particular procedure for the parties to perform the marriage ceremony.

The parties are allowed to marry each other as per the prevailing customs in their community. Such parties are bound to follow certain conditions stated in the provisions of the said Act. After the enactment of this Act, every Hindu party is obligated to follow the provisions of this Act to enter into a valid and legal marriage with his/her partner.

Hindu Marriage is applicable to both, people who are Hindu by birth or are by religion.

2. What are the essentials of a valid Hindu Marriage?

Valid marriage under Hindu Marriage Act (HMA) shall qualify the conditions enumerated under Section 5, HMA. The most important condition is that both the parties should be Hindu within the meaning of Section 2, HMA.

Section 5 of the Hindu Marriage Act - Conditions for a Hindu marriage.

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

i) neither party has a spouse living at the time of the marriage;

ii) at the time of the marriage, neither party
   a. is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
   b. though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
   c. has been subject to recurrent attacks of insanity

iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;

iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

Following are the conditions for a Hindu Marriage under Section 5:

Conditions for a Hindu Marriage

Section 5 of the Act deals with conditions which are required to be fulfilled by the parties to make such marriage valid and legal. These conditions are as follows:

- The person willing to marry must not have any living spouse already. A man is not allowed to have more than one wife at a time. If a person has 2 living spouses sat onetime, it amounts to bigamy. It is considered an offence under this Act. Thus, a person is not allowed to marry another person without ending the first marriage by way of divorce. Even if a person marries without ending the first marriage, he is punishable under Sections 494 and 495 of the Indian Penal Code.
- The law defines an age limit for female and males to get married. At the time of marriage, the female must have completed the age of 18 years and the male must have completed the age of 21 years. If such a condition is not fulfilled by the parties who are marrying, such a marriage is considered void in the eyes of the law.
- None of the parties to a marriage should be incapable of giving valid consent due to unsoundness of mind. A valid and free consent of parties marrying is an essential requirement for a valid marriage.
- Even when the parties have the capability of giving valid consent, they must not suffer from any mental disorder which deems him/her not fit for the purpose of marriage or for the procreation of children out of that wedlock.
- None of the parties is capable of being married if they suffer from any repetitive insanity attacks.
- The parties willing to marry must not fall under the sapinda relationship or prohibited degree of relationship. Such a party can marry under the above- mentioned degree of the relationship if their custom or usage allows doing so.

Explanation of the Conditions:

- The idea of **monogamy** is ensured in the first requirement;
- The second criterion concerns the mental ability of one of the other parties to the marriage, and it prevents an idiot or lunatic from marrying;
- The third criterion stipulates that the bride and groom must be at least 18 years old to enter into a marriage. This criterion, by the way, provides for the bride and groom's agreement to the marriage because the law considers the mature at a specific age.

- The fourth requirement forbids individuals **in prohibited degrees from marrying** unless it is the customary practice or embedded in the usage of a community. The laws that govern each of them allow for a marriage between the two;
- The fifth criterion is similar to the fourth, with the exception that it **forbids two sapindas from marrying.**

3. What is a void marriage?

The term void means null and that which has no legal effect. A void marriage is invalid from its very inception and is generally treated under the law as if it never existed. Under Section 5 of the Hindu Marriage Act, 1955 (HMA), certain conditions must be met fora marriage to be valid; if these conditions are not met, the marriage is considered either void or voidable.

Section 11 of HMA deals with the provision of Void Marriages. Section 11 does not define void marriages but gives the grounds on which a marriage can be called void.

Section 11. Void marriages: Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 2 [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Under Clause (i) of Section 5 neither party has a spouse living at the time of the marriage. Under Clause (iv) of Section 5 the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two.

Under Clause (v) of Section 5 the parties are not sapindas of each other, unless the custom or usage governing each of them permits a marriage between the two.

Conditions that Make a Marriage Void

- **Another Spouse living at the time of marriage**

If either party is already married and the previous marriage is still subsisting, the subsequent marriage is void. In India, bigamy (marrying more than one person at the same time) and polygamy (having multiple spouses concurrently) are prohibited under most personal laws and result in void marriages. The term bigamy means the act of entering into a marriage with one person while still legally married to another.

- In ***Lily Thomas v. Union of India (2000),***[18] Supreme Court held that when a Hindu spouse converts his religion to remarry with no intention to practice such religion, but to only achieve an ulterior motive, then the second marriage will be declared void. It is violative of Article 21 of the Indian constitution as well.
- In the case of ***Smt. Yamunabai v. Anant Rao (1988),***[19] SC held that wife of second marriage cannot be considered a wife because such marriage is void ab initio (void from the beginning), and she cannot claim maintenance under Section 125 of CrPC (Code of Criminal Procedure, 1973)

- **Degree of Prohibited Relationship**

Marriages between parties who are closely related by blood are considered void. For example, marriages between siblings (full or half-blood), between a parent and child, or between an uncle/aunt and niece/nephew are prohibited and void. According to Section 3(g) of the HMA, two persons are said to be within the degrees of prohibited relationship.

i) If one is a lineal ascendant of the other; or
ii) If one was the wife or husband of a lineal ascendant or descendant of the other; or
iii) If one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
iv) If the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters.

By virtue, Section 5(iv) of HMA the marriage within the degree of prohibited relationship is void. Section 5(iv) also mentions that if the custom or usage of each party to the marriage allows such marriage, then such marriage will be considered as valid marriage. Section 18(b) of the HMA punishes the parties to such marriage with simple imprisonment which may extend to one month or with fine which may extend to 1000 rupees or both.

- **Sapinda**

According to Hindu law, when two persons offer pinda to the same ancestor it is known as sapinda relation. Sapinda relations are that relation that is connected with the same blood.

[18] 2000 CRILJ 2433
[19] AIR 1988 SUPREME COURT 644

In sapinda relation if any person marries their marriage is considered to be void. According to Section 3(f) of HMA, sapinda means the following: Sapinda relationship with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation. Two persons are said to be sapindas of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them; By virtue of Section 5(v) of the HMA, the marriage within the sapinda is void. Section 5(v) also mentions that if the custom or usage of each party to the marriage allows such marriage, then such marriage will be considered as valid marriage. Section 18 (b) of HMA punish the parties for such marriage with simple imprisonment which may extend to one month or with fine which may extend to 1000 rupees or both.

- **Mental Incapacity:**

If either party is incapable of giving valid consent to the marriage due to unsoundness of mind or mental incapacity, the marriage may be considered void.

- **Underage Marriage:**

If one or both parties are underage at the time of marriage and do not meet the legal age requirements for marriage (which vary by personal laws), the marriage is voidable and can be declared void upon application to the court.

- **Invalid Ceremonies**:

Marriages conducted without proper ceremonies or in violation of essential marriage formalities prescribed by law (such as registration requirements) maybe deemed void.

Effect of void marriage

- The parties don't have the position of husband and wife in a void marriage. Children born from the void marriage are legitimate according to Section 16 HMA. The SC in the matter of ***Revanasiddappa v. Mallikarjun (2023)***[20] has affirmed that a child born out of a void or voidable marriage has the right to claim a share in their parents' share of Hindu Undivided

[20] 2023 INSC 783

Family (HUF) property under the Mitakshara law. However, it was emphasized that such a child cannot automatically be considered a coparcener in the HUF by birth.

- There are no mutual rights and obligations present in a void marriage. A void marriage is a marriage that was never valid from the start and cannot be made valid. Common reasons for a court to find a marriage void ab initio are that the marriage is incestuous or polygamous.
- A void marriage is one of two types of marriages that can be annulled or considered as if it never happened in the eyes of the law.
- Divorce and annulment differ in that divorce acknowledges the existence of the marriage and legally terminates it, while annulment voids the marriage as if it never happened.

When a marriage is declared void, it has no legal effect, and the parties are considered to have never been legally married. This can impact issues such as property rights, inheritance, and other legal aspects that are typically associated with valid marriages.

4. What is the difference between void and voidable marriages under Hindu Law?

A void marriage is considered legally invalid from the beginning, typically due to factors such as bigamy, incest, or lack of legal capacity to marry. Section 11 of the Hindu Marriage Act defines void marriages. It declares that a marriage shall be deemed null and void if any of the requirements listed in Section 5 clauses (i), (iv), and (v) are broken.

Section 11. Void marriages

Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 2 [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

The following are the requirements of the three clauses stated above:

- Neither bigamy nor polygamy should exist.
- It is not appropriate for the individuals involved in a marriage to be in a banned relationship unless their respective customs or usages allow for such a marriage.
- There is no sapinda relationship between the parties.

Key Features of Void Marriage:

- Provisions related to void marriage is provided under Section 11 of the Hindu Marriage Act 1955.
- According to void marriages, marriage does not exist in the eyes of the law.
- In void marriage, the marriage has no legal status and the court simply provides the nullity finding.
- Parties to void marriages are free to remarry without a court-issued order of nullity.

Voidable Marriage

A voidable marriage is one that is valid unless challenged by one of the parties involved, usually due to factors like fraud, coercion, or incapacity. A marriage that is voidable by either party is called as voidable marriage. Both parties to a marriage have the option to dissolve the marriage until a petition to nullify the marriage is filed, it will remain legal. A competent court may declare the marriage null and unlawful in accordance with the Hindu Marriage Act 1955. The choice to keep the marriage intact or to declare it null and void must be made by the husband and wife, or other persons involved.

Section 12. Voidable marriages

1. Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

[(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person otherthan the petitioner.

2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—

i. the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

ii. the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case maybe, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—

(ii) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(iii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iv) that marital intercourse with the consent of the petitioner has not taken places in the discovery by the petitioner of the existence of [the said ground].

Section 12 of the Hindu Marriage Act lists the circumstances under which a marriage is deemed voidable by either party.

- Because one spouse is unable to complete a marriage, it remains unfulfilled.
- If one of the married parties is mentally incapable of providing consent.
- If the person in question has a mental illness or has had recurrent episodes of insanity.
- In the event that the woman is expecting a child at the time of her marriage, whether from her intended spouse or not.
- If either party's permission was won through coercion or deceit.
- If the bridegroom is younger than 21 years old, if the bride is under 18 years old, or if any of the parties are minors

Key Features of Voidable Marriage:

- Section 12 of the Hindu Marriage Act of 1955 deals with voidable marriages.
- Under voidable marriages, marriage exists and will always be recognized as legal unless it is disputed.
- In voidable marriages, the decree is authorized by the court once all necessary circumstances are satisfied.
- Parties to voidable marriages are not free to remarry without a court-issued order of nullity.

Difference between Void Marriage and Voidable Marriage Basis Void marriage

BASIS	VOID MARRIAGE	VOIDABLE MARRIAGE
Meaning	A marriage that is invalid is void marriage	A marriage that is voidable at the option of either side is known as voidable marriage
Relation between parties	Avoid marriage does not provide the couples any rights or duties toward one another because they do not become husband and wife.	In contrast, when a marriage is voidable, the parties become husband and wife and have reciprocal rights and duties that last until a court order dissolves the union.
validity	Void ab initio is a marriage that is void. From the outset, it is nothing. To dissolve the null and invalid marriage, no court order is necessary. But if the parties want it, the court can simply issue an annulment judgment to declare a marriage null and invalid.	However, avoidable marriage does not cease to exist unless a judge orders it to be nullified.
Remarriage	Any of the parties to avoid marriage are free to remarry without obtaining a court order voiding the union. Bigamy is not an attractive crime.	However, as the voidable marriage is still legally binding if it is not prevented, neither party may remarry without first securing a declaration declaring the marriage null and void or risk being charged with bigamy
Wife Entitled for Maintenance	A wife who has a void marriage does not become a wife and is therefore not eligible to maintenance under section 125 of the Cr.P.C.	However, up until the marriage is dissolved by an order of declaration, the woman in a voidable marriage may be entitled for maintenance.
Right to Inheritance	When succession opens in a null marriage, neither party gets the right to inherit upon the death of the other.	If avoidable marriage is not dissolved, then either person will become entitled to inherit upon the death of the other when succession opens.
Children	In a null marriage, the children are regarded as legitimate.	The Supreme Court eliminated the difference that deemed children from a voidable marriage to be illegitimate, ruling that a kid cannot be considered illegitimate.

- In ***M.M. Malhotra v. Union of India,***[21] the court held that if a man who is already married performs another marriage, it will be considered as void and it cannot be termed as plural marriage.
- In ***Surjeet Kaur v. Jhujav Singh,***[22] the court held that if the couple got apart or separated judicially and if any of the spouse enters into or performs an act of marriage with another, then such marriage shall be considered as void.
- In the case ***Shankutala Devi v. Amar Nath [1982],***[23] that marriage performed under prohibited degree of relationship can be valid but for considering it to be valid marriage it has to be proved that or there should be evidence that is accepted in their tradition and it should old enough so that it can be termed or said as custom.
- The court said that the tradition or the ritual marriage being performed under prohibited degree of relationship should not be against the ethics or any public policy in the case of ***Balaswami Reddiar v. Balakrishna Reddiar [1956].***[24]
- In the case of ***Harihar Prasad v. Balmiki Prasad,***[25] the court held that marriage performed by the parties who are sapindas to each other can be considered as valid if there is any evidence that it has been a tradition of both the parties. Else the marriage of two sapinda is punishable under Section 18 of the Hindu Marriage Act.

5. What is Divorce by Mutual Consent?

According to Section 13B of the Hindu Marriage Act -

Divorce by mutual consent. —

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

[21] AIR 2006 SC 80
[22] AIR 1980 PUNJAB AND HARYANA 274
[23] AIR 1982 PUNJAB AND HARYANA 221
[24] AIR 1957 MADRAS 97
[25] 1975 AIR733

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

If the parties i.e. the husband and wife have been living separately for one year or more, they may agree to mutually dissolve their marriage and approach the court with a divorce petition on the ground that they have not been able to live together and would like to obtain a divorce by mutual consent.

The Cooling Off Period

The HMA provides for a statutory cooling-off/waiting period, of at least 6 months, from the date of presentation of the divorce petition, to enable the parties to explore the possibility of settlement and cohabitation. If the petition is not withdrawn post 6 months (and no later than 18 months) from the date of presentation of the petition, the court, after hearing the parties and making necessary inquiry(ies), may pass a decree of divorce declaring the marriage to be dissolved.

Courts have also held that the object of Section 13-B is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down, and to enable them to rehabilitate without undue hardship. This is owing to the fact that while the cooling-off period is to safeguard against a hurried decision, it could not have been the intention of the legislature to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. The SC has noted that the 6-month period is not mandatory, and it will be open to the court to exercise its discretion and waive the cooling off period, where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. Even though every effort must be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the court should not be powerless in enabling the parties to have a better option and future. Various High Courts have followed the suit and waived the waiting period (on a case-by case basis) and held that the 6-month period is only discretionary in nature.

In effect, the courts may waive the cooling-off period based on the extant facts and circumstances. Such cases include instances where:

I. the marriage has irretrievably broken down;
II. parties have been fighting/litigating for a long time and there is no chance of reconciliation;
III. the parties have already settled their disputes by way of mediation; or
IV. not waiving off the waiting period would frustrate future prospects of the parties.

Mutual Consent of Parties

It is well established that mere filing of the petition for obtaining divorce by mutual consent does not authorise the court to make a decree for divorce. Mutual consent of both parties is required at every stage for an application under Section 13-B of the HMA to succeed, which includes:

I. when the parties move to the court at the first instance with the divorce petition;
II. when the parties approach the court after the waiting period;
III. when the court makes inquiry under Section 13-B (2) of the HMA; and
IV. at the time when the decree of divorce is granted.

Therefore, it is only on the continued mutual consent of the parties that a decree for mutual consent divorce can be passed by the court.

Withdrawal of Consent

While parties have the unequivocal right to withdraw their consent, it must be noted that that there have been instances where courts have ruled that the withdrawal of consent is not genuine and/or proper and therefore, such withdrawal should not be given effect to.

Withdrawal of consent should be genuine and either party should not have any ulterior motive(s) — such as taking undue advantage of the other party; to extort (more) money and/or obtain additional property(ies), etc. For instance, the wife had specifically withdrawn her consent for divorce, after receiving valuable property rights in consideration of the divorce. Additionally, she refused to cohabit with her husband despite her explicit refusal to proceed with the divorce. The court not only granted divorce but also upheld the settlement agreement despite the withdrawal of consent. Therefore, while withdrawal of consent is an unfettered right, care must be taken to ensure that the basis for withdrawal is legitimate, reasonable, and genuine. Additionally, it must be noted that consent cannot be withdrawn once the divorce has been decreed.

- In ***Nikhil Kumar v. Rupali Kumar***[26] , the Supreme Court waived 6 months statutory period using its power given under article 142 of the Constitution of India and the marriage was dissolved to do complete justice.
- In ***Manish Goel v. Rohini Goel,***[27] a bench of two Judges of SC held that authority of this Court under article 142 of Constitution could not be used to waive the legal period of six months for filing the second motion under section 13B as doing so will be passing an order will be exploitation of constitutional provisions.
- In ***Supreme Court Bar Assn. v. Union of India,***[28] the Constitution Bench of Supreme Court held under article 142, Apex Court cannot altogether ignore the substantive provisions of a statute and pass orders with reference to an issue which can be settled only through a mechanism prescribed in another statute. The Court observed that the power under article 142 can be exercised in cases where the court found the marriage to be totally impracticable, emotionally scary, beyond retrieve and conked out irretrievably. This power can be work out only to put an end to useless litigations and to save the parties from further anguish.

Filing of Divorce -

The question of where to file a divorce by mutual consent is also important.

As per *section 19 of the Hindu Marriage Act (HMA) of 1955*, a petition for divorce by mutual consent can be filed in the district court where:

I. The marriage was solemnised; or
II. Parties to marriage last resided together, or
III. Where the wife is residing on the date of the filing of the petition, or
IV. Where one petitioner resides in India and the other is outside India, where the petitioner resides.

6. What are the grounds of Divorce under the Act?

In a literal sense, "divorce" refers to the legal dissolution of a marriage between two individuals. Historically, within Hindu Dharma Shastra, marriage was seen as a sacred and indissoluble bond, with no provisions for divorce until the enactment of the Hindu Marriage Act in 1955.This Act, introduced grounds for divorce under Section 13, allows parties to petition a competent court for a divorce decree. Dissolution of a marriage required one spouse

[26] AIR 2016 SC 2163]
[27] AIR 2010 SC 1099]
[28] *AIR 1998 SC 1895*

to be found guilty of behavior that fundamentally undermined the marriage. This development gave rise to the fault-based theory of divorce. Despite the traditional view of marriage as an eternal union, it became evident that even such unions were not entirely beyond dissolution. However, prior to this codification, there was no comprehensive legal framework specifically addressing divorce.

13. Divorce

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation:

In this clause,

a. the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
b. the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

[Explanation- In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground, —

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [bestiality; or]

[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of

such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iii) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation. —

This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]

13 A. Alternate relief in divorce proceedings.

In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

13 B. Divorce by mutual consent

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

Grounds of Divorce -

The secular mind-set of the Indian judicial system has initiated proclamation of various personal laws based on different religious faiths. Hindus, Christians and Muslims are governed under separate marriage acts and grounds for divorce in India.

Grounds for Divorce under the Hindu Marriage Act, 1955

The following are the grounds for divorce in India mentioned under the Hindu Marriage Act, 1955.

- **Adultery** – The act of indulging in any kind of sexual relationship including intercourse outside marriage is termed as adultery.
- **Cruelty** – A spouse can file a divorce case when he/she is subjected to any kind of mental and physical injury that causes danger to life, limb and health. The intangible acts of cruelty through mental torture are not judged upon one single act but series of incidents. Certain instances like the food being denied, continuous ill treatment and abuses to acquire dowry, perverse sexual act etc are included under cruelty.
- **Desertion** – If one of the spouses voluntarily abandons his/her partner for at least a period of two years, the abandoned spouse can file a divorce case on the ground of desertion.
- **Conversion** – In case either of the two converts himself/herself into another religion, the other spouse may file a divorce case based on this ground.
- **Mental Disorder** – Mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and insanity and therefore cannot be expected from the couple to stay together.
- **Venereal Disease** – If one of the spouses is suffering from a serious disease that is easily communicable, a divorce can be filed by the other spouse. The sexually transmitted diseases like AIDS are accounted to be venereal diseases.
- **Renunciation** – A spouse is entitled to file for a divorce if the other renounces all worldly affairs by embracing a religious order.
- **Not Heard Alive** – If a person is not seen or heard alive by those who are expected to be 'naturally heard' of the person for a continuous period of seven years, the person is presumed to be dead. The other spouse should need to file a divorce if he/she is interested in remarriage.
- **No Resumption of Co-habitation** – It becomes a ground for divorce if the couple fails to resume their co-habitation after the court has passed a decree of separation.

The following are the grounds for divorce in India on which a petition can be filed only by the wife.

- If the husband has indulged in rape, bestiality and sodomy.

- If the marriage is solemnized before the Hindu Marriage Act and the husband has again married another woman in spite of the first wife being alive, the first wife can seek for a divorce.
- A girl is entitled to file for a divorce if she was married before the age of fifteen and renounces the marriage before, she attains eighteen years of age.
- If there is no co-habitation for one year and the husband neglects the judgment of maintenance awarded to the wife by the court, the wife can contest for a divorce.

➢ ***Swapna Ghose v. Sadanand Ghose[29]:***

It held that the direct proof of adultery is very rare.

➢ ***Suresh Babu v. Leela[30]:***

It was held that husband converted himself to Islam and wishes to marry another woman, thus wife demanded divorce on basis of conversion without her consent.

➢ ***Rani Narasimha Sastry vs Rani Suneela Rani [2019][31]:***

The Supreme Court's decision stated that a marriage characterized by prolonged hostility towards both partners can be deemed as cruel, thereby qualifying for dissolution as per Section 13 (1) (ia) of the relevant legislation.

➢ ***Mohanlal v. Smt. Pushpaben:[32]***

Supreme Court held that irretrievable breakdown of marriage is a ground for divorce in India.

7. Short Notes

a. Full Blood and Half Blood

According to Section 3 (c) of the Hindu Marriage Act,

Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife.

Example: A and B are married to each other and out of their married have children namely C and D. Here C and D are related to each other by full blood.

[29] AIR 1989 CAL 1
[30] 2006 (3) KLT891
[31] 2019 Latest Caselaw 1129 SC
[32] 1973

Two persons are said to be related to each other by half-blood when they are descended from a common ancestor but by different wives.

Example: A (husband) and B (Wife) have a child namely C. B predeceased or gave divorce to A and subsequently A marries D and out of this marriage have a child namely E. Here C and E are related to each other by half blood

b. Uterine Blood

Two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Example: A (husband) and B (Wife) have a child namely C. A predeceased or gave divorce to B and subsequently B marries D and out of this marriage have a child namely E. Here C and E are related to each other by uterine blood.

c. Sapinda Relationship

The word Sapinda is a Sanskrit term that refers to a common lineage between two people. It can be broken down into two parts: 'Sa', which means "one" or "same", and 'pinda', which refers to the rice ball offered in funeral rituals as a homage to the departed soul and their departed ancestors.

According to Section 3(f) of the Hindu Marriage Act, 1955,

(i) sapinda relationship with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be sapindas of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

If a marriage is found to violate Section 5(v) for being a sapinda marriage, and there is no established custom that allows such a practice, it will be declared void.

d. Degrees of Prohibited relationship

According to Section 3 (g) of the Hindu Marriage Act, 1955,

Two persons are said to be within the degrees of prohibited relationship

(i) if one is a lineal ascendant of the other; or

(ii) if one was the wife or husband of a lineal ascendant or descendant of the other;

(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

The concept of prohibited degrees of relationship stems from both moral and practical considerations. Relationships that are too close—whether by blood, marriage, or adoption—are often seen as incestuous and, therefore, unethical or immoral. In addition to the moral dimension, there are biological and social considerations. Close familial relationships may increase the likelihood of genetic disorders in offspring due to a lack of genetic diversity, which is a critical concern for many societies.

Section 5(iv) of the Hindu Marriage Act,1955 specifies that in order to solemnize the marriage between two Hindus, they must not be within the degree of prohibited relationship unless there is any custom or usage allowing them to do so.

e. Restitution of Conjugal rights

The expression conjugal rights connote the following:

- The right of a couple to have each other's society.
- The right to marital intercourse.

The expression restitution of conjugal rights means the restoration of conjugal rights which were enjoyed by the parties previously.

Section 9 of the Hindu Marriage Act, 1955, deals with the concept of "Restitution of Conjugal Rights." This section provides a legal remedy for situations where either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other spouse.

The aggrieved party can seek restitution of conjugal rights by filing a petition in the district court. If the court is satisfied with the truth of the statements in the petition and finds no legal ground to deny the application, it may decree restitution of conjugal rights.

Restitution of Conjugal Rights is a legal claim under Section 9 of the Hindu Marriage Act. If one partner unjustifiably withdraws from the other's company, the affected party can apply to the district court for the restoration of conjugal rights. In simple terms, it's about reestablishing the companionship of a spouse who has left the relationship without a valid reason.

Essential Requirement for Seeking Relief under Section 9 -

- The parties must be legally married to one another.
- One should exclude themselves from another's social circle.
- This withdrawal has to be made without a valid justification.
- The assertion that there is no legal justification for rejecting the decree must be proven to the court's satisfaction.

f. Registration of Hindu Marriage

Section 8 of the Hindu Marriage Act, 1955 mentions the registration of marriages. Marriage is a social requirement.

After the marriage is solemnized among the bride and the groom, certain necessities should be fulfilled to offer it a legal standing, i.e., to make it legitimate under the legal guidelines accepted in India by registering it. The essential conditions of a legitimate Hindu Marriage are described under Section 5 and Section 7 of the Hindu Marriage Act, 1955. Under section five of the Hindu Marriage Act 1955, a marriage is legitimate only if each of the parties to the marriage are Hindus. The validity of any Hindu marriage shall in no way be affected by the omission to make the entry in the Hindu Marriage Register.

The Supreme Court and the High Courts have repeatedly emphasized the need to make registration of marriages obligatory.

- In ***Kanagavalli v. Saroja,***[33] the Madras High Court highlighted the significance of registration in catering safety to women. It stated that if the registration had been obligatory, punishment for bigamy could be made easy. If a Hindu male contract a second marriage and registers it, at the least the second spouse will have as proof, the report to show that the marriage was registered between her and the man.

8. Discuss validity of following

[33] AIR 2002 Mad 73],

i. A male Hindu marries his niece

Under Section 5 of the Hindu Marriage Act, 1955, a valid Hindu marriage must meet specific conditions, one of which is that the parties should not fall within the "degrees of prohibited relationship" as defined under Section 3(g) unless a custom allows it. Marrying a niece (a sister's daughter) falls within these prohibited degrees since she is considered a close blood relative. Section 5(vi) defines marriage within these relationships as invalid, as such unions are traditionally considered incestuous in Hindu law. Therefore, unless the parties can demonstrate that their community has a well-established custom permitting marriage between a man and his niece, this marriage would be invalid under the Act.

ii. A Hindu female marries another Hindu female

The Hindu Marriage Act, 1955, was enacted with a traditional perspective, interpreting marriage as a union between a "bride" and a "bridegroom," implying a heterosexual relationship. The Act does not provide any provisions or recognition for same-sex marriages. Therefore, as the law currently stands, a marriage between two Hindu females cannot be legally recognized under the Hindu Marriage Act. This means that even if a Hindu female marries another Hindu female in a ceremonial manner, it would not be considered valid in the eyes of the law, and no legal marital rights or obligations would arise from such a union under this Act. Any legal recognition would have to be pursued through alternate legal frameworks or future amendments to the law.

iii. A Hindu female marries her adopted brother

Section 5 and Section 3(g) of the Hindu Marriage Act prohibit marriage within certain close familial relationships, known as "degrees of prohibited relationship." An adopted sibling, though not biologically related, is considered legally equivalent to a biological sibling. This means that, in general, the Act considers an adopted brother as equivalent to a blood brother, thus falling within the prohibited degrees of relationship. This prohibition can be waived only if there is a custom within the community specifically allowing marriage between an adopted brother and sister. Without such a custom, this marriage would be invalid. The legal fiction of adoption under Hindu law treats the adopted child as if they were a biological child of the adoptive parents, thereby restricting marriage between adopted siblings.

iv. A Hindu male marries his natural uncle's daughter

Marrying a natural uncle's daughter, who is the cousin of the Hindu male, generally falls within the prohibited degrees of relationship under the Hindu Marriage Act. Section 3(g) and Section 5(i) define certain degrees of kinship within which marriage is prohibited due to close blood ties. However, the Act does allow for exceptions based on recognized customs within specific communities or regions, where cousin marriages may be permitted. For example, in some South Indian communities, marriage between cousins is culturally accepted. If such a custom exists and can be proven, the marriage may be considered valid. In the absence of such a custom, however, this marriage would be invalid under the Act.

v. A Hindu male marries the wife of his father's brother

A marriage between a Hindu male and the wife of his father's brother would generally be considered invalid under the Hindu Marriage Act, as she would fall under the definition of a close elder female relative. This relationship falls within the degrees of prohibited relationships outlined in Section 3(g) of the Act, as she would be akin to an aunt in the familial hierarchy. In Hindu personal law, relationships with close elders in the family are strongly prohibited to maintain familial respect and prevent incestuous unions. Only if there is a specific custom within the community allowing such a union can it be legally recognized. Without such a custom, this marriage would be void under Section 5 of the Act.

vi. A Hindu male marries his wife's sister before a decree of divorce has been passed

Under Section 5(i) of the Hindu Marriage Act, a marriage is only valid if neither party has a living spouse at the time of the marriage. This provision aims to prevent bigamy. If the man is still legally married to his first wife because a decree of divorce has not yet been passed, his second marriage would be considered bigamous. A bigamous marriage is void under Section 11 of the Act, meaning it has no legal standing. Further, Section 17 of the Act makes bigamy punishable under the Indian Penal Code. Until a divorce decree legally dissolves the first marriage, any subsequent marriage would be null and void and could also lead to criminal liability for bigamy.

vii. The wife is living in her father's house since the last 3 years with the consent of her husband. Can the husband claim divorce against the wife?

Section 13(1) (ib) of the Hindu Marriage Act lists "desertion" as a ground for divorce. Desertion, as per the Act, involves one spouse abandoning the other without their consent and with the intent to permanently forsake the marital relationship. In this case, since the wife is living separately with her husband's consent, it does not meet the definition of desertion. For desertion to be claimed, it must be proven that the spouse intended to permanently sever the marital relationship and that it was done without the other spouse's consent. The husband, therefore, cannot file for divorce on the grounds of desertion as there is no abandonment or intent to forsake the marriage. He would have to seek divorce on other grounds if applicable.

9. Desertion and adultery as grounds for divorce with judicial decisions.

DESERTION

Living together is the essence of marriage, living apart is its negation. This negation of the very essence of marriage is that the law terms as desertion. Desertion is a ground for divorce under section 13 (1) (i-b) of Hindu Marriage Act, 1955. The word desert means to abandon, cease to frequent, withdraw one's held or attendance. The court held that desertion means abandonment and implies an action of withdrawal from a cohabitation that exists.

The Explanation to Section 13 (1) defines desertion as, 'the expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. When one spouse leaves the other in a manner which is not justifiable, the deserted spouse has a remedy by way of matrimonial reliefs. However, it is not defined in the Act purposely because the concept varies from time to time and place to place. It is a variable concept in a progressive society and its meaning changes with time. It is a dynamic concept. There has been a plea for providing an appropriate definition of the term 'Desertion', but it has not been accepted up till now. It is easier to describe desertion than to define it in precise words.

Desertion refers to total abandonment of matrimonial obligations. It means permanent forsaking or abandonment of one spouse by the other without any reasonable cause and without the consent of the other i.e., running away from the matrimonial life. It refers to total repudiation of marital obligations and permanent abnegation from the conjugal life. Desertion becomes a matrimonial offence, when it is without a reasonable cause and without the consent

of other party to marriage, provided it continues for a period of two years immediately preceding the presentation of the petition in the court. As pointed out by the Supreme Court in ***Savitri Pandey v. Prem Chandra[34] :***

" Desertion for the purpose of seeking divorce under the Act means the intention permanent forsaking and abandonment of one spouse by the other without that other's, consent and without reasonable cause. In other words, it is a total repudiation of the obligation of marriage. Desertion is not the withdrawal from a place, but from a state of things….. Desertion is not a single act complete in itself, it is a continuous cause of conduct to be determined under the facts and circumstances of each case."

In another important case, which was a case under the Bombay Hindu Divorce Act, 1947, the court lucidly defined and explained the concept of desertion. It held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.

The following ingredients must be fulfilled for the desertion :

a. Factum deserdendi, the factum of separation i.e., the petitioner and the respondent should be either physically or mentally separated from each other.
b. Animus deserendi (an intention to desert the respondent for a permanent period).
c. Desertion should have been without any reasonable cause.
d. It should have been without the consent of the petitioner and
e. It should have been for a continuous period of two years, immediately preceding the presentation of the petition in the court.

The period of two years must be a continuous period and it must run up to the date of the filing of the petition in the court.

Desertion is completed, when the factum of separation and animus deserendi co-exist. Therefore, if factum of separation is there, without animus deserendi, the offence of desertion is not complete. And t he vice-versa is also true i.e., if animus deserendi is there and the factum of separation is absent, the offence of desertion remains incomplete, barring the petitioner to claim any remedy under Sec.10 (a) of Hindi Marriage Act, 1955.

[34] AIR 2002 SUPREME COURT 591

The factum of separation and animus deserendi may take place at the same time or the separation later on, may be joined with animus deserendi. In one case, the spouse leaves the matrimonial home, with an intention to leave the other spouse permanently and in the other, the spouse first leaves the matrimonial home and then, after leaving it, decides, not to come back to the married life for ever. In both the cases, desertion would be complete.

To constitute desertion, factum and animus must co-exist and it is immaterial, whether former precedes the later or later precedes the former.

By the amendment of 1976, desertion has been for the first time included as a ground for divorce under Section 13 (1) (i-b) of Hindu Marriage Act. Before 1976, desertion was a ground for judicial separation but now it is also a ground for divorce.

Desertion is of two types namely :

- Actual desertion, and
- Constructive desertion.

In both types of desertion, the factum and animus must co-exist.

Actual Desertion

In actual desertion, the deserting party leaves the matrimonial home permanently i.e., with no intention to return back to the matrimonial home again.

In order to constitute actual desertion, the following fact should be established :

a. The spouses must have parted or terminated all joint living.

b. The deserting spouse must have the intention to desert the other spouse.

c. The deserted spouse must not have agreed to the separation.

d. The desertion must have been without reasonable cause, and

e. The requisite duration must be fulfilled i.e., two years

Desertion is a continuing offence. To constitute desertion, it is necessary that both factum of separation and animus deserendi should continue during the entire statutory period of two years immediately preceding the presentation of the petition.

In ***Durga Prasanna Tripathy v. Arundhanti Tripathy***, [35] the petition for divorce filed by the husband on the ground that his wife deserted him after 7 months of marriage. Parties were living separately for about 14 years. Attempts were made by the husband and his relatives in getting back wife to matrimonial home with no success. Records showed that the parties disliked each other. There were no chances of reconciliation and then court granted divorce on the ground of desertion. In another same type of case the parties to the marriage were living separately for last more than decade. Attempts were made for reconciliation between them, but such attempts were of no effect. There was no chance of both living together to continue their marital life. In order to do justice between the parties the Supreme Court dissolve their marriage under Article 142 read with section 13 (1) (i-b0 of the Hindu Marriage Act.

Where a husband serving in the army goes to his house in Dehradun during vacation but the wife does not allow him to enter house and misbehaves with him. It was held that the husband was entitled to a divorce decree on the ground of wife's desertion.

Constructive Desertion

In constructive desertion, the deserted party is compelled to leave the matrimonial home with her/his consent and free will. In most of the cases, it is the wife, who is compelled to leave the matrimonial home, for no fault of her own, involuntarily. In desertion, the cohabitation ceases for a permanent period. It is brought to an end completely with no hope of its resumption is future. There is total repudiation of the matrimonial obligation and an end of marital life.

Desertion is not withdrawal from a particular place, but it is withdrawal from a particular state of things, i.e., cohabitation. Thus, the constructive desertion consists of that state of things where one party to marriage has been compelled to leave matrimonial home owing to repulsive behavior of the other party and the party thus living separately cannot be held to be deserter but the party compelling her/him would be held to be the deserter.

Reasonable cause of desertion : If a man persists in doing acts which he knows his wife will probably not tolerate or which no ordinary woman would tolerate, without justifiable cause, and she leaves, then it is he who is deemed to have deserted her whatever his desire or intention might have been. In ***Rohini Kumari v. Narendra Singh,***[36] the Supreme Court has made it clear that there is no substantial difference between the case of a man who intends to cease

[35] AIR 2005 SUPREME COURT 3297
[36] 1972 SCR (2) 657

cohabitation and leaves the wife and the case of a man who with the same intention compels his wife by his conduct to leave him. In ***Om Prakash v. Madhu***[37]**,**the wife had to stay away from the husband as he refused to allow her to come because he wanted to complete his studies. It was held that there was no desertion on the part of the wife. The husband's contention that the fact that they have been living separately for 16 years constituted the *factum* and the wife's refusal to receive notices sent to her for returning constituted *animus*, were rejected.

The Supreme Court in ***Chetan Das v. Kamla Devi***,[38] observed that when the husband continued to have illicit relations with another woman, the court refused to grant decree of divorce in favour of the husband. The husband's offer to keep the respondent wife with him was not accepted as genuine, and the court held that none else but the appellant husband alone is to be blamed for the unhappy and unfortunate situation, and so he could not be entitled to seek divorce.

Where the respondent wife failed to substantiate allegation of immoral advances by the father-in- law and ill-treatment by the husband, nor demonstrated willingness to return to the matrimonial home after the death of the father-in-law, the Supreme Court restored the trial court order granting judicial separation to the husband on ground of the wife's desertion. In this case, the respondent wife had gone to her parent's house for delivery, which obviously was not construed as desertion, as she had no animus at that time to leave the matrimonial house for good. The element of desertion came later when she refused to come back and join her husband.

In ***P. Kalyanasundaram v. K. Paquialatchamy***,[39] the husband contended that the wife had an overwhelming attachment towards her father and her continued stay with her father is willful and intentional and amounts to desertion. The court denied it as desertion by saying that without any reason, simply for the love and affection towards the father, no married daughter would stay with her father abandoning her husband. The theory of abnormal relationship has not been established by the petitioner.

It may conclude by saying that desertion is the negation of togetherness, which is the basis of conjugal relationship. It is a ground for divorce under all matrimonial laws and intention to desert and the factum of desertion are both required to prove desertion. A party physically leaving the other may not necessarily be the one guilty of desertion, if the non-withdrawing

[37] AIR1997RAJ214
[38] AIR 2001 SUPREME COURT 1709
[39] AIR 2004 MADRAS 43

spouse has impelled the other spouse to leave because of his/her behavior, it is the former who would be guilty.

ADULTERY

Adultery is defined under Section 13(1) of the Hindu Marriage Act, 1955, is a ground for divorce in India. According to it, adultery is an act of voluntarily indulging into sexual intercourse out of marriage, i.e. any person who is not the spouse of the respondent. Thus, it becomes necessary for the petitioner to prove that he/she is married to the respondent, and the respondent made voluntary sexual intercourse with another person.

Any of the spouse filing a divorce petition have to prove the statement with pieces of evidence. With time and significant cases, Indian courts have emphasized that the act of adultery have to be proved beyond a reasonable doubt. However, over the years Honorable Supreme Court's in such cases seems to differ, stating that proving beyond reasonable doubts is a compulsion for criminal cases, not civil cases.

In a similar case ***Dastane vs Dastane***, [40]the Supreme Court stated that the presence of proof beyond a reasonable doubt is not a necessity, when such crucial personal relationships are involved, like a husband and his wife.

The inclusion of adultery as a statutory ground for divorce under the Hindu Marriage Act was a significant development introduced by the Marriage Laws Amendment Act of 1976. This legal provision recognizes the impact of extramarital affairs on the sanctity of marriage and provides a legal recourse for individuals who have been betrayed by their spouses.

Essentials of Adultery under The Hindu Marriage Act:

- Involvement of one spouse in consensual intercourse with a person of the opposite sex, whether married or unmarried.
- Voluntary and consensual nature of the intercourse.
- The marriage must be subsisting at the time of the act.
- Adequate circumstantial evidence is necessary to establish the liability of the adulterous spouse.

Legal precedents serve as guiding principles in jurisprudence, shedding light on the application of law in real-life scenarios. Among these, the landmark cases of ***Swapna Ghose v. Sadanand***

[40] AIR 1975 SC 1534

Ghose and ***Sachindranath Chatterjee vs Smt. Nilima Chatterjee*** stand as pivotal examples, highlighting the profound implications of adultery in matrimonial disputes.

Swapna Ghose v. Sadanand Ghose Case:[41]

In Swapna Ghose's case, the wife's petition for divorce was predicated on the shocking discovery of her husband in a compromising position with another woman, a revelation corroborated by testimony from concerned neighbors. This pivotal case underscores not only the emotional devastation wrought by infidelity but also the legal recourse available to aggrieved spouses within the framework of the Hindu Marriage Act. The court's decision to grant divorce in this instance underscores the recognition of adultery as a significant breach of marital trust and fidelity, warranting the dissolution of the marriage bond.

Sachindranath Chatterjee vs Smt. Nilima Chatterjee Case:

Similarly, in Sachindranath Chatterjee's case, the petitioner sought divorce on the grounds of adultery after discovering his wife's involvement in extramarital relations with individuals including his own nephew. This case serves as another poignant illustration of the devastating impact of adultery on marital relationships. The court's decision to grant divorce highlights the acknowledgment of the aggrieved party's right to seek redressal for the betrayal of marital vows, ensuring that justice is served in cases of marital discord arising from infidelity.

These landmark cases not only underscore the gravity of adultery in matrimonial disputes but also provide valuable legal precedents for future adjudications. They emphasize the importance of upholding the sanctity of marriage and preserving the trust and fidelity essential to marital harmony. Moreover, they reinforce the legal avenues available to individuals' seeking relief from the emotional and psychological turmoil inflicted by spousal infidelity, thereby contributing to the evolution of family law jurisprudence in India.

10. Explain the difference between Divorce and Judicial separation.

Judicial separation is a legal process that allows married couples to formally separate while remaining legally married. It offers an alternative to divorce and is often sought when couples want to live apart but do not wish to end their marriage entirely. It can be filed at any time after marriage and if the grounds are satisfied, a decree of judicial separation is granted.

[41] AIR 1989 CALCUTTA 1

This decree results in a temporary suspension of the marital relationship and the parties cannot remarry. Judicial separation may serve as a precursor to divorce in some jurisdictions and can provide an opportunity for reconciliation. The right to inheritance remains intact for both parties under judicial separation in family law.

Divorce is a legal process that ends a marriage entirely. It can only be filed after one year of marriage and the process involves a two-step judgment, with attempts at reconciliation before granting a divorce decree. Once a divorce is finalised, the marriage legally terminates and both parties are free to remarry. Divorce grounds typically include living in an adulterous relationship or meeting specific criteria as per the applicable legislation. The right to inheritance associated with the former spouse ends with divorce.

Under Section 10 of the Hindu Marriage Act, 1955, either party to a marriage, whether the marriage was solemnized before or after the commencement of the Act, has the legal right to file a petition for judicial separation. Once a decree in favour of the parties is granted, they are not legally obliged to live together or cohabit as a married couple. While they are permitted to live separately, some matrimonial rights and obligations still persist during this separation. It's important to note that during the period of judicial separation, neither party can remarry.

The rights and obligations that continue to exist between the separated parties are effectively suspended during this period. The grounds for seeking judicial separation are essentially the same as those for obtaining a divorce, as outlined in Section 13(1) of the Act. These grounds typically revolve around issues such as cruelty, desertion, adultery, or other legally recognized reasons that render the continuation of the marriage untenable.

Differences Between Judicial Separation and Divorce

Time for Filing a Petition

- One of the fundamental differences between judicial separation and divorce lies in the timeline for filing a petition. A petition for judicial separation can be filed at any time after marriage, providing couples with a more immediate option for addressing their issues.
- On the other hand, a petition for divorce can only be filed after one year of marriage, which is intended to encourage couples to exhaust all possible avenues for reconciliation before ending the marriage legally.

Stages of Granting a Decree

- The process of obtaining a legal decree also differs significantly between judicial separation and divorce. In the case of judicial separation, there is only one stage of judgment. If the grounds for seeking separation are satisfied, a decree is granted without any further attempts at reconciliation. In contrast, divorce proceedings involve a two-step process.
- The first step is often focused on reconciliation, mediation, or counselling to encourage couples to resolve their differences. If reconciliation efforts fail, a divorce decree is granted, effectively terminating the marriage.

Effect

- The most profound difference between judicial separation and divorce is the effect it has on the marital relationship. A decree of judicial separation results in a temporary suspension of the marriage. This means that while legally separated, the couple is not officially divorced and they may still be considered married in some legal and social contexts.
- A divorce decree, however, brings the marriage to an end, freeing both parties from the legal obligations and restrictions associated with marriage.

Remarriage

- Remarriage is another area where judicial separation and divorce diverge. After a decree of judicial separation, the parties involved cannot remarry, as their marital status remains intact, albeit in a suspended state.
- In contrast, following a divorce decree, the parties are free to remarry, as their previous marriage is legally dissolved.

Grounds for Divorce

- One critical distinction is that judicial separation is often a precursor to divorce, as it serves as one of the grounds for seeking divorce. In jurisdictions that allow no-fault divorce, a period of judicial separation can be a prerequisite before a divorce can be granted.
- In contrast, divorce does not serve as grounds for judicial separation, as it is a separate and distinct legal process.

Basis for Granting the Decree

- The basis for granting a decree of judicial separation and divorce also differs. A single instance of adultery is sufficient to obtain a judicial separation decree.
- However, a divorce decree, typically requires living in an adulterous relationship or satisfying specific grounds outlined in legislation, which can vary depending on the jurisdiction. These grounds may include cruelty, desertion, or irreconcilable differences.

Reconciliation

- The possibility of reconciliation is another key difference between judicial separation and divorce. Judicial separation allows for the potential reconciliation of the couple. It provides an opportunity for the parties to address their issues and potentially repair the marriage, while still maintaining their legal separation.
- In contrast, divorce is a final and irreversible step, with no possibility of reconciliation being built into the process.

Right to Inheritance

- The right to inheritance is another aspect where judicial separation and divorce diverge. Under a decree of judicial separation, the right to inheritance remains in force. The couple is still legally married, albeit separated and retains their respective inheritance rights.
- In contrast, a divorce decree terminates the right to inheritance associated with the former spouse, as the legal relationship is entirely severed.

11. Discuss Cruelty and Conversion to another religion as Grounds of Divorce.

Cruelty

For centuries, Indian women had to face cruelty in various ways at every stage of their lives. In marital relationships, they suffered emotional and physical trauma, yet they were expected to remain loyal and obedient to their husbands. With the adoption of a rights-based constitution, attempts were made to change the low status of this woman. Many laws have been passed to protect women and their rights from harm, giving them the freedom and power to oppose the cruelty committed against them. Cruelty in marriage were not recognized as a reason for divorce until 1976, after which through the amendment of the Hindu Marriage Act of 1955 it

was included as a valid reason of divorce. The cruelty of a wife to her husband appeared a while ago and is just as important.

Outlining cruelty as a valid ground for divorce under the Hindu law of all marital crimes, cruelty is the most difficult to define. Parliamentarians and judges deliberately refrain from developing a definition of cruelty because there are no fixed and defined parameters for what constitutes cruelty. Lord Denning in the case of ***Sheldon v. Sheldon*** [42]said, "The categories of cruelty are not closed. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behavior, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty."

In a recent ruling, the Supreme Court observed that "cruelty is being used in relation to human conduct or human behavior, it is all the more difficult to define it. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other."

Before the amendment of the Hindu Marriage Act in 1976, cruelty was a ground for judicial separation only. The 1976 revision of the law made cruelty a reason for divorce taking into account changes in social morals. The amendment also clarified that there is no need to be afraid5 of danger or harm to his/her life while cohabiting to compose cruelty. Article 10 (1) (b) of the Act omitted the phrase "as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party". The Hindu Marriage Act states that a marriage "dissolved by a decree of divorce on the ground that... after the solemnization of marriage, treated the petitioner with cruelty." Therefore, after marriage, if either the husband or the wife treats the other cruelly, both the husband and the wife are free to obtain a divorce decree. However, the general idea is that it is usually the husband who treats his wife cruelly. But that's not the case. Under the Indian Divorce Act of 1869, cruelty was only available to the wife as a reason for divorce, while the Special Marriage Act of 1954 was available to both husbands and wives. Defendants have treated the petitioner cruelly since their marriage. It is also important to note that the term "respondent" also includes "a child who beat her father at the request of her mother". If the husband does not protect his wife from his persistent parents, he will be guilty of cruelty.

[42] (1966) 2 WLR 993

The defendant's intention is one of the common lookouts made by the court in determining whether a particular act is cruel. The word "treated" by law means the intentional act of a respondent which was found to be cruel. Still, intent is not an integral part of cruelty.

Recently, while hearing a matter on cruelty as a reason for divorce, the Supreme Court ruled that defendants' actions must be significant in order to constitute cruelty. At the same time, it indicates whether a rational person is acceptable to live in such a situation. Marriage is a gentle and pious bond, so the judgment of cruelty must be based on the psychological changes in spouse's behavior. Small quarrels and petty arguments are not enough to justify cruelty. The Supreme Court also said that forgiveness and coordination are needed to continue the marriage, and therefore slight spousal differences and controversies cannot be exaggerated enough to apply for divorce.

Marital cruelty can be physical, mental, emotional, or sexual. Because India is a patriarchal society, women have always been treated inferior to men. They are treated like their property and are intended to serve them throughout their lives. There is no one type of cruelty which makes it increasingly difficult to pinpoint exactly what it is. Mental cruelty involves causing agony and suffering to a partner in some way that makes it difficult for either person to live with. Physical cruelty includes beatings, slaps, and other forms of physical violence. Sexual cruelty, on the other hand, include forcing a partner to indulge in sexual intercourse or unnatural sex. Indian courts also recognize the denial of sexual intercourse in marriage as a component of mental cruelty.

Mental cruelty

Mental cruelty under Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together.

The Black's Law Dictionary (8th ed., 2004) describes the term "mental cruelty" as "(without actual violence) the behavior of a spouse that endangers life, physical health, or mental health of the other spouse. Mental cruelty does not fit the strict definition since the constituents of mental cruelty are neither limited nor constant. Changes in lifestyle, education, family patterns, modernization and globalization, and increased use of social media are some of the factors

contributing to the changing dimensions of mental cruelty. Therefore, what may not be called an act of cruelty in past times, can fall in its sphere today.

In the matter of ***Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan***, [43]the Supreme Court acknowledged that the concept of legal cruelty changes as social concepts and living standards change and evolve. Some of the factors recognized as mental cruelty by the Supreme Court are indifference from the spouse, persistent abuse, regular ridiculous remarks, refraining from making sexual relations, and blaming the spouse for it. Not only these, but the constant threat of dissolving marriage and harassment was recognized as the basis for mental cruelty.

In the case of ***Samar Ghosh v. Jaya Ghosh***,[44] the Supreme Court gave a list of illustrations which depict mental cruelty. The list however, is not exhaustive. "Unilateral decision of refusal to have intercourse for a considerable period without any physical incapacity or valid reason may amount to mental cruelty. Unilateral decision of either husband or wife after marriage not to have a child may amount to mental cruelty. Frequent rudeness of language, petulance, and indifference, sustained abusive and humiliating treatment calculated to torture or render miserable the life of the spouse could amount to mental cruelty."

Apart from that, if the husband or wife is sterilized without the knowledge or consent of the spouse, or (in the latter case) abortion, it can also be mental cruelty. In the case quoted here, the husband filed a lawsuit for mental cruelty because his wife did not cook for him, and she cooked for herself only. The Supreme Court recognized the wife's conduct as an act of mental cruelty.

Another point of debate is the Supreme Court and other High Court decisions that ruled that denial of sex constitutes mental cruelty. The court has approved this proposal, but the issue of marital rape has not yet been decided by the court. Marital rape has not yet been criminalized, but it is itself a mental cruelty against wife. This means a lack of respect, dignity and sensitivity to his wife and violates her right to life and freedom under Article 21 of the Indian Constitution. The woman cannot be treated as someone "who does not have a say over her body and someone who has no right to deny sexual intercourse to her husband." The Delhi High Court correctly ruled that "marriage is not a contract for legal sexual pleasure." If denial of sexual intercourse is equivalent to inflicting mental cruelty on the husband, then forcing the wife to do the same

[43] 1982 SCR (1) 695
[44] AIRONLINE 2007 SC 347

is inflicting mental cruelty on her. Therefore, the court or parliament needs to clarify this legal issue by addressing the exception of Section 375 IPC, thereby making marital rape a criminal offense.

Section 13(1) (ia) of Hindu Marriage Act, 1955 provides. "The other party has, after the solemnization of marriage, treated the petitioner with cruelty." Cruelty as a reason for divorce was introduced into this law by the 1976 amendment. Prior to that, it was not a valid reason for divorce, but for judicial separation only.

Apart from these personal laws, Indian criminal law also makes cruelty against women criminal offense under section 498A of the law. The section reads as: "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine." The section mandates the offence as non- bailable, cognizable and non-compoundable. It includes not only physical cruelty, but also mental cruelty in the form of "torture and abnormal behavior".

Parliament has passed the Protection of Women from Domestic Violence Act, 2005 (PWDVA) in order to protect the feminine gender from family violence and make their right to life under Article 21 of the Indian Constitution more meaningful. The law provides for one year's imprisonment and a maximum fine of Rs. 20,000 when wife is exposed to domestic violence.

However, Section 498A IPC provides relief only to women who have faced cruelty by their husband or their husband's family. Husbands exposed to cruelty, especially mental cruelty, do not have remedies under this section.

"No one can be tortured, cruel, inhumane, or degrading or punished."

Against this background, cruelty by either husbands or wives is a breach of fundamental right to dignity and freedom. The Constitution of India i.e., the basic norm of India, guarantees the right to live with dignity as it is part of the right to life under Article 21. Inflicting physical and mental distress and inflicting suffering on others is the same as injuring others.

Conversion as a Ground for Divorce

Conversion of one of the spouses to any other religion affords a ground to the other spouse certain matrimonial reliefs. In this context, conversion means that the person has voluntarily relinquished his or her religion and adopted another religion after going through some formal

ceremony. If a Hindu embraces a totally different religion, such as Christianity or Islam, he or she may be stated to be a convert.

The party who ceases to be a Hindu by conversion cannot file a petition for divorce under this section. This ground can be claimed only by the other party.

In ***Durga Prasad Rao v Sudarshan Swammi***,[45] it was observed that in every case of conversion or reconversion to Hinduism, formal renunciation of religion or performance of expiatory ceremony is not essential. Therefore, whether the conversion or reconversion took place is a question of fact.

The Hindu marriage act has proposed two conditions when conversion as a ground for divorce can be invoked, these are

- That the respondent has ceased to follow the faith of Hinduism, that is he is no longer a Hindu
- That the respondent has converted to another religion that is a non-Hindu faith.

This ground for divorce has been included in the Hindu Marriage Act only for the purpose of circumventing the provision of S.494 of Indian Penal Code, 1860. Conversion to Islam by a Hindu spouse per se does not lead to divorce, but it only give a right to the other spouse to file a petition for divorce under S.13(1)(ii).

Where a Hindu wife converted to Muslim faith and then married a Mohammedan, it was held that her earlier marriage with a Hindu husband was not dissolved by her conversion. She was charged and convicted of bigamy under S.494 of Indian Penal Code, 1860.

In a case where a Hindu wife was fraudulently taken away of the accused a Mohammedan who married her according to Muslim law after converting her to Islam. It was held that the conversion of the Hindu wife to Mohammedan faith did not ipso facto, dissolve the marriage and she could not during the life time of her former husband enter into a valid contract of marriage. Accordingly, the accused was convicted for adultery under Section 497 of Indian Penal Code, 1860.

[45] ILR 1940 Mad 653

Consequences of Conversion

The spouse of the one, who has converted, does not automatically convert to Islam. It poses as a difficulty when, at the time of marriage both parties are governed by two separate personal laws. The judicial announcements indicate that it would be neither just nor right to hold that a marriage dissolves automatically by conversion of one spouse to another religion. In ***Nandi alias Zainab v, The Crown***[46], the accused Nandi, the Hindu wife changed her religion to Islam and thereafter married a Mahomedan. It was held that mere conversion of her to Islam did not dissolve the marriage with the petitioner automatically and consequently, she was charged with bigamy under Section 494 I.P.C

In the numerous grounds of divorce stated in S.13, arduous circumstances are created by the respondent which are borne by the petitioner, which means that the consequences of the acts of the other party aggrieve the petitioner. Therefore, since there exists some form of hurt, it is accepted as a ground for divorce.

On the contrary, mere conversion does not hurt either of the parties to a marriage, especially the petitioner. When the conversion to another faith is genuine and not due to any ulterior or unlawful motives, conversion need not be a ground for divorce because change in religion does not affect the continuance of conjugal love and therefore it should not be permissible for a party to the marriage to get a divorce by changing his or her religion, But when conversion is and it has been noticed often, only for the purpose of marrying and then again reconverting to prior faith, it becomes a necessary ground for divorce. This conversion not only commits an offence, but it also invalidates S.494 of IPC i.e. bigamy.

12. Explain maintenance provisions under the act.

Introduction-

- The maintenance generally covers the expenses for essentials for the substance of life. However, it is not merely a right for survival of the claimant.
- The term 'Maintenance' has also been defined under Section 3(b) of the Hindu Adoption and Maintenance Act, 1956.
- It includes provision for food, clothing, shelter, and basic needs such as education and medical expenses.

[46] ILR 1920 Lahore 440

Under Hindu Law Maintenance can be Claimed Under Two legislations

- The Hindu Adoption and Maintenance Act, 1956.
- The Hindu Marriage Act, 1955.

Maintenance under Hindu Adoptions and Maintenance Act, 1956

- The HAMA,1956 lays down the provisions relating to maintenance.
- This act provides rules for the maintenance of a wife, children, aged or infirm parents, widowed daughter-in-law and dependents.
- The main reason behind the provision of maintenance is to provide financial support to a divorced wife or aged parents or minor children or any other dependents for their well-being and for their sustenance needs.

Who Can Claim Maintenance Under HAMA,1956?

- Wife
- Widowed daughter-in-law
- Children (legitimate sons, illegitimate sons, unwedded legitimate and illegitimate daughter, married daughter unable to maintain herself)
- Parents
- Any other dependent person

Maintenance of Wife (Section 18 of HAMA,1956):

Section 18(1):

- Under this sub-section, the husband is obligated to maintain his wife during her lifetime.
- It is the husband's personal obligation to maintain his wife which begins with the marriage and continues throughout the marital relationship.
- It is the imperative duty of the husband to maintain a wife who resides with him.
- The husband's obligation of maintenance comes to an end only when she leaves him without any justifiable cause or his consent.

Section 18(2):

- Under this sub-section, a wife who lives separately from her husband with a justifiable cause or his consent is entitled to maintenance.

- It provides a list of grounds stating when a wife can live separately and still claim maintenance from her husband

Wife can Live Separately, without Forfeiting Claim for Maintenance:

- If the husband has deserted her for any period of time.
- If the husband has treated her with cruelty.
- If the husband is suffering from a virulent form of leprosy.
- If he has another living wife.
- If he keeps a concubine at home or any other place.
- If he had converted to another religion.
- Any other reasonable cause apart from these.

Section 18(3):

- The wife will not be entitled to live in a separate residence if she has been unchaste or has converted to any other religion.

Maintenance of Widowed Daughter-in-Law (Section 19 of HAMA,1956):

- Section 19(1) lays down that a Hindu wife who has married before or after the commencement of this act shall be entitled to be maintained after the death of her husband by her father-in-law.

She will be Entitled to Maintenance in the Following Conditions:

- When she is unable to maintain herself out of her own earnings.
- When she is unable to obtain maintenance from the estate of:

➢ Her husband
➢ Her father or mother
➢ Her son or daughter

- Section 19(2) states those conditions under which the father-in-law is not liable to maintain his widowed daughter-in-law:
    - ➢ When the father-in-law does not have any means to maintain her from the coparcenary property in which the daughter-in-law does not have any share, or
    - ➢ When the daughter-in-law remarries.

Maintenance of Children and Aged Parents (Section 20 of HAMA,1956):

- The act provides that a Hindu is obliged to maintain her/his children and aged or infirm parents if they are unable to maintain themselves out of their own earnings.

The term 'children' means –

- Minors who are below the age of 18 years;
- The term includes legitimate and illegitimate children.
- Also, the term 'parent' includes a childless stepmother.

Maintenance of Dependents (Section 21 and 22 of HAMA,1956):

- Section 21 and Section 22 of the act create new rights of certain persons, called dependents.
- Dependents are relatives of deceased Hindu, and they claim maintenance against the property of the deceased in the hands of heirs.
- The term heir includes all those persons on whom the estate of the deceased devolves.
- The right of dependents exists against property and not against the heirs personally.
- It does not arise during the lifetime of the person; they are termed dependents only after his or her death.

Maintenance Under Hindu Marriage Act, 1955:

- The HMA, 1955 and HAMA, 1956 initially dealt with the provisions of granting maintenance.
- Under the HMA,1955, there are 2 types of maintenance that can be claimed.

Section 24-Temporary Maintenance (Maintenance Pendente lite):

When it appears to the court that either the wife or the husband, has no independent income sufficient for her or his support, the court may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Section 25-Permanent Maintenance:

The maintenance that is granted permanently after the disposal of the proceedings for a separation or divorce is referred to as 'Permanent Maintenance'.

According to Section 25 of the HMA,1955, the applicant being either the husband or wife is entitled to receive his or her maintenance from the spouse in the form of a gross sum or monthly sum for a term not exceeding the lifetime of the applicant or until the applicant remarries.

Case Laws:

I. ***Raj Kishore Mishra v. Meena Mishra (1994)***[47]: The Allahabad High Court held that the obligation of father-in-law shall not be enforceable if he has no means to maintain his daughter-in-law from any coparcenary property in his obsession out of which daughter- in-law has not obtained any share.

II. ***Amar Kanta Sen v. Sovana Sen (1960)***[48]***:*** The Calcutta High Court held that, even if the wife is living in adultery or unchastity, she has been provided with a starving maintenance. o It was also laid down that, if she is able to maintain herself, then there is no need for any kind of maintenance that has to be provided.

13. Discuss various grounds available under the act 1955 for annulment of marriage.

Introduction

Marriage is the basis of social institution and the foundation of marital legal rights and obligations. Under Hindu Personal The term Law Marriage is treated as a Sacrament. “Marriage” has not been defined in any statute. However different Personal laws cleared that, it is known to be a process or event signifying the assumption of roles of husband and wife in accordance with the jural tenets prevalent in the society or stratum of society to which the parties belong, in contemporary societies, marriages are by and large contracts which have the legal sanction of the State.

The Form or Ceremony of marriage is not essential, so long as the marriage is intended and the law - is observed and the contracting parties. Under the Hindu Marriage Act, 1955 Sec- 5 clearly defines the essential conditions for a valid marriage. Judicial Separation or Divorce however is a negative approach and annulment of marriage is a very unusual remedy in the society. Annulment refers only to making a voidable marriage null; if the marriage is void ab

[47] AIR 1995 ALLAHABAD 70
[48] AIR 1960 Cal 438

initio, then it is automatically null, although a legal declaration of nullity is required to establish this. If the said conditions laid down under Sec- 5 of the Hindu Marriage Act, 1955 are not fulfilled then the marriage may be declared as void or voidable as the case may be. However, Sec-11 and Sec-12 of the Hindu Marriage Act, 1955 stipulates the contraventions grounds, when a marriage is declared as Void or Voidable respectively.

Annulment of marriage is a legal process whereby the marriage is proclaimed as null and void. An annulled marriage is a marriage which is considered to have never been solemnized and thus making such marriage invalid. Such invalid marriages are also considered as void since the beginning i.e. void ab initio.

Conditions For Annulment of a Marriage under Various Laws

The Hindu Marriage Act, 1955:

The Hindu Marriage Act, 1955 provides several conditions for a marriage to be treated as valid in terms of the Act. In case the said conditions as laid down in the Act are not adhered to, the marriage shall be treated as invalid.

The Act provides for an invalid marriage to be declared as void marriage at the behest of either of the parties to the marriage as below:

- If a marriage has not been consummated owing to impotency of one of the parties to the marriage; or
- Marriage is in contravention to the provisions of the Hindu Marriage Act; or
- If the consent of the person approaching the Court or the cases wherein the consent of the guardian of the said person was required, if needed was obtained forcibly or by fraud with regard to the nature of the ceremony or any material fact or circumstances concerning the other party; or
- The bride was at the time of the marriage pregnant by some other person.

Limitation for Filing Petition Seeking Annulment of Marriage:

- A petition seeking annulment of marriage can be moved within one year of marriage.
- As the case may be, upon discovering the fraud committed one of the parties to the marriage.

Jurisdiction for Annulment of Marriage:

- The Court under whose jurisdiction the marriage was solemnized; or
- The place wherein the couple last resided; or
- The place where the wife is residing; or
- The place where the Petitioner is residing.

Procedure for Annulment of Marriage:

- The parties can approach the competent Court wherein one of the parties has lasted resided, Court within whose jurisdiction the marriage was solemnized, Court under whose jurisdiction parties last resided.
- A petition seeking annulment of marriage has to be filed within one year of the marriage or within a year from the date of discovery of fraud.
- The Hon'ble Judge shall have to be satisfied on the conditions as stipulated in the Act.
- The decree of Annulment of marriage declaring the marriage null and void shall be thereafter granted by the Court.

Grounds on Which the Petition Seeking Annulment of Marriage can be Rejected:

- The petition seeking annulment can be rejected if the same has been filed more than a year after force had ceased to operate or a year after the fraud was discovered; or
- The party approaching the Hon'ble Court has, with his/her consent, stayed with the other party as wife or husband after the force had ceased to operate or, a year after the fraud was discovered.

In view of the above, various personal laws provide grounds whereby a marriage can be declared null and void upon moving to appropriate Court seeking annulment of marriage on the grounds as enumerated in various personal laws. Parties approaching the Court seeking annulment of marriage by way of petition challenge the validity of the marriage since the beginning.

The children out of such wedlock are considered to be legitimate after the annulment of the marriage. They can inherit and demand partition of only the properties of their parents, as deemed children can. In the case of ancestral property, these children can claim their share in the property falling in the share of the parents.

14. What are the special grounds of divorce available to the wife only.

Wife's Special Grounds for Divorce under the Hindu Marriage Act, 1955-

I. Pre-Act Polygamous Marriage:

According to this clause, if a man had a marriage before the commencement of the Hindu Marriage Act, 1955 and the husband has married another woman despite the fact that his first wife is alive. In such a case the first wife can seek divorce.

II. Rape, Sodomy or Bestiality:

Rape is defined under Indian Penal Code as if a man performs sexual intercourse with a female which is against her will; without her consent; or with her consent by putting her or any other person who is likely to be close with her, in fear of hurt or death or; with her consent when she believes that man to be her lawful husband and the man knows he is not her husband; or with her consent when she is unable to understand the situation and its consequences either because of unsoundness of mind or intoxication or by any other way; or with/without her consent when she is a minor i.e., under eighteen years of age; as she is incapable of giving a consent.

Sodomy– Usually it refers to oral or anal sex which was once illegal in our country. But since section 377 has been struck down, homosexual relationships are now legal and so does sodomy.

Bestiality– it is a criminal offence of having sexual relationship with an animal.

So, if a wife finds that her husband has been involved in any of these three offences she can seek for divorce.

- If the husband does not resume cohabiting with the wife for one year or upwards after the decree of maintenance is awarded to the wife, then wife can seek divorce.
- Repudiation of marriage: A woman can seek for divorce if she has been married before attaining the age of fifteen. She has a chance to renounce her marriage before she attains the majority age i.e., eighteen years of age.

15. Write a note on legitimacy of children of void and voidable marriages.

Introduction

The legal status of children born out of void or voidable marriages has been a subject of much debate in many countries. Void or voidable marriages are those that are considered invalid or annulled for various reasons, such as bigamy, consanguinity, age, or mental incapacity. In such cases, questions often arise as to the legitimacy of the children born out of such marriages and their inheritance rights.

Void and Voidable Marriages

A void marriage is one that is considered invalid from the beginning and, therefore, does not exist in the eyes of the law. A void marriage is void ab initio, meaning it is void from the start. There are various reasons why a marriage may be considered void. For instance, if one of the parties is already married, if the parties are closely related, if one or both of the parties are underage, or if one of the parties is mentally incapacitated, the marriage may be considered void.

On the other hand, a voidable marriage is one that is valid until a court declares it invalid. In other words, until a court annuls a marriage, it is still considered to exist. There are various reasons why a marriage may be considered voidable. For example, if one of the parties was coerced or forced into the marriage, if one of the parties was under the influence of drugs or alcohol, or if one of the parties was fraudulently induced into the marriage, the marriage may be considered voidable.

Legitimacy of Children Born Out of Void and Voidable Marriages

The presumption of legitimacy holds that children born within a marriage are presumed to be the biological children of the parties to the marriage, regardless of the validity of the marriage. This presumption is based on the belief that a stable family unit is essential for the upbringing of a child. However, this presumption can be rebutted if there is evidence to the contrary, such as DNA testing or other medical evidence.

Inheritance Rights of Children Born Out of Void or Voidable Marriages:

The inheritance rights of children born out of void or voidable marriages also vary from one country to another. In some countries, such children have the same inheritance rights as those

born in valid marriages, while in others, their inheritance rights may be limited. In most cases, the inheritance rights of such children depend on the laws of the country in which they reside.

For instance, in the United States, state law governs the question of legitimacy, and a child's inheritance rights depend on the state in which they were born. In general, however, children born out of wedlock are entitled to inheritance rights from their mother, but their rights to the father's property depend on whether the father has acknowledged paternity or whether the child has been legally legitimized.

In the United Kingdom, the inheritance rights of children born out of wedlock depend on whether the parents' relationship was void or voidable. If the relationship was void, the child is considered illegitimate and does not have any inheritance rights. However, if the relationship was voidable and the parents subsequently married or the father acknowledged paternity, the child is considered legitimate and has the same inheritance rights as a child born within a valid marriage.

With the advent of the 21st century it is seen that, regardless of their parents' marital status, children have equal rights to inherit from their parents' estates. This principle of equality among children means that children born out of void or voidable marriages have the same inheritance rights as those born in valid marriages.

However, there may be exceptions to this principle. For instance, if the deceased parent specifically disinherited the child in their will, the child may not be entitled to any inheritance. Additionally, if the inheritance laws of a particular country require a child to be legitimate to inherit from their parents, children born out of void or voidable marriages may not be entitled to any inheritance.

The length of the marriage can also have an impact on the legal status of children born out of void or voidable marriages and their inheritance rights. In some countries, if the marriage is short-lived, the child may not be entitled to any inheritance. This is because the courts may consider that the child did not have a meaningful relationship with the deceased parent or that the deceased parent did not have sufficient time to provide for the child.

The timing of the annulment or divorce may also have an impact on the inheritance rights of children born out of void or voidable marriages in some countries, such as the United States.

For example, if the marriage is annulled or dissolved before the child is born, the child may not be considered legitimate and may not be entitled to any inheritance.

Inheritance Rights in India

In India, the inheritance rights of children born out of void or voidable marriages are determined by personal laws, which vary depending on the individual's religion. Hindu and Muslim laws, in particular, have their own rules and regulations governing these matters.

Under Hindu law, a child born out of wedlock is considered illegitimate and does not have any inheritance rights over the father's ancestral property. However, the Hindu Succession Act, 1956, has been amended several times to ensure that such children have some inheritance rights in the father's self-acquired property.

The 2005 amendment to the Act states that such children are entitled to a share in the father's property if he dies intestate (without a will). The share of the property is determined based on the number of children the father has, including the illegitimate child. However, the amendment does not apply to the father's ancestral property.

In Muslim law, the issue of legitimacy is determined based on the concept of legitimacy by acknowledgment (known as Iqrar, or acknowledgement of paternity). If the father acknowledges the child's paternity, the child is considered legitimate, and they are entitled to inheritance rights. However, if the father does not acknowledge the child's paternity, the child is considered illegitimate, and they do not have any inheritance rights in the father's property.

It is worth noting that the Indian Constitution guarantees the right to equality, and the courts have repeatedly emphasized the importance of treating all children equally, regardless of their legitimacy. In several landmark judgements, the Supreme Court of India has held that denying inheritance rights to children born out of wedlock is a violation of their fundamental rights. The court has also stated that the law should not discriminate against such children and should ensure that they are not subjected to any stigma or discrimination.

In recent years, there have been calls for reforming personal laws to ensure that children born out of void or voidable marriages have equal inheritance rights. Some experts argue that the laws should be amended to ensure that all children, regardless of their legitimacy, have equal rights to their parents' property. Others suggest that the laws should be reformed to provide for a more nuanced approach to inheritance, taking into account the specific circumstances of each case. The issue of legitimacy and inheritance rights for children born out of void or voidable

marriages is a complex and sensitive one, particularly in the context of personal laws in India. While Hindu and Muslim laws have their own rules and regulations governing these matters, the Indian Constitution guarantees the right to equality, and the courts have emphasized the importance of treating all children equally.

As India continues to evolve and change, it is essential to ensure that personal laws reflect the values of a modern, progressive society and that they protect the rights of all individuals, regardless of their circumstances of birth.

The legal status of children born out of void or voidable marriages and their inheritance rights vary from one country to another. While in most countries, such children are considered legitimate, their inheritance rights may be limited depending on the laws of the country in which they reside.

The presumption of legitimacy, which assumes that children born within a marriage are the biological children of the parties to the marriage, may be rebutted in some cases if there is evidence to the contrary.

Furthermore, it is essential to recognize that the legal status of children born out of void or voidable marriages and their inheritance rights can have significant implications for the child's emotional and psychological well-being. It is essential to recognize that the child's well-being should be the primary consideration in any legal proceedings or decisions.

16. Discuss provisions relating to custody of minor children relating to proceedings under the act.

Concept of Custody of a Minor Child

Minor is considered a person of tender age who is not able to maintain himself on his own. Maintenance refers to basic education, safety assurance, food, shelter, and other necessities. In the matter of conflict where the custody of a child is in question, the court of law has the power to decide to adhere to the personal laws of the respective religion.

Such contention before the court is presented in case of divorce, judicial separation or if any parent of a child dies and his custody comes into question. ***In Gaytri Bajaj vs. Jiten***,[49] the Bhalla court stated that it determines the living environment, financial stability and future of the child while awarding custody to the applicant.

[49] 12 SCC 471 2012

In the case of a remarried father with a child with a second wife, the court sidelines the financial inability of the mother and makes her the custodian. Furthermore, it may bind the father to pay for the necessities of the child.

Minor: Sec 3 of the Indian Majority Act, 1875 states, that every person domiciled in India shall attain the age of majority upon his completing the age of eighteen years and not before.

Sec 4(a) of the Hindu Minority and Guardian Act, 1956 states, that a minor is a person who has not attained the age of 18 years.

Custody in Hindu Law

i. Hindu Marriage Act, 1955:

The Hindu Guardianship Act, 1956 clearly affirms under section 6 that, the mother is the natural guardian of a minor to the age of 5 years. However, the Hindu Marriage Act, 1955 entrust power to the court to provide interim order or decree as it deems fit in relation to custody of a minor child. The duration stated in the section is a period of 60 days from the date of service of notice on the respondent. It also entrusts power to the court to revoke or suspend any previous order passed in this regard.

Section 26 states: that the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

ii. Special Marriage Act, 1954:

The aforementioned act had been enforced in the year 1954 which governs the persons whose relationship does not fall under personal law. Inter religion marriages and Intra gender marriages are covered under this enactment. Custody of a child born out of such wedlock is governed by the act.

Sec 38 of the Special Marriage Act, 1954 provides similar power to district court as given under section 26 of HMA. The district court of competent jurisdiction may pass a decree or interim

order as it deems fit to the court and is consistent with the desire and welfare of the child in conflict. It also provides the power to revoke, suspend or vary any previous order. Moreover, the application for maintenance and education of that child must be disposed of within a duration of 60 days from the date of service of notice.

Custody in Muslim Law:

Muslim law is the law of the Shariat that also governs the concept of child custody. The Hizanit was coined for the concept of custody of minors in Muslim law. Mother is entitled to custody of a child less than 7 years of age. The phenomenon of custody in Muslim law is also governed by the Guardianship of Wards Act, 1890. Section 6 asserts that the minor will be governed by adhering to the personal of which he is a subject. Moreover, section 17 of the act states that guardianship of minors must be governed as per personal law. Constructive custody is enshrined under section 25 of the act. ((Tejaswi Pandit, Custody of Children, SCCOnline, 2019)). Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 states Muslim personal law shall be applied that in the matter of guardianship.

Custody in Christian Law:

Divorce Act, 1869 consists of the law governing custody of a child in a suit of judicial separation. And, it provides that the application for this regard shall be disposed of within a span of 60 days from the date of service of notice on the respondent. Section 41: In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said Court.

When it comes to the concept of custody, the court always strives to establish a mid-way while bestowing a verdict. The welfare of the child surpasses all other requisites of the law. The court may award joint or sole custody depending upon the circumstance of the case. Furthermore, there is also a provision for third-party custody if both biological parents are unable to maintain the child. Nonetheless, Hindu Minority and Guardianship Act, 1956 do not contain any rule for third-party guardianship but the court may award it if the subject is falling under the ambit of third-party custody. However, each enactment is based on the healthy upbringing of the minor child.

IV.THE HINDU SUCCESSION ACT, 1956

1. Define Agnate and Cognate, Intestate, Heir, Descendants.

Agnate

According to the Hindu Succession Act, an agnate is a relative who is connected to the deceased (propositus) entirely through male lineage. This means that each link in the relationship chain to the deceased is male, irrespective of gender in the final generation (e.g., a daughter's son if all previous connections are male).

Legal Definition: As per Section 3(a) of the Act: An agnate is one who is related to the deceased by blood or adoption wholly through males.

Example under Hindu Succession Act:

If a person, Suresh, dies intestate, his brother, his brother's son, his father's brother, and so forth would be considered his agnates. However, Suresh's sister's son would not be an agnate because the link is not exclusively male (the sister is female).

Cognate

Under the Hindu Succession Act, a cognate is a relative who is connected to the deceased by blood or adoption but may have a female in any link of the relationship chain. Cognates include both male and female lineage, allowing for relations where one or more links are through females.

Legal Definition: As per Section 3(c) of the Act: A cognate is one who is related to the deceased by blood or adoption but not wholly through males. In other words, there can be one or more female links.

Example under Hindu Succession Act:

If Suresh has a daughter named Meera, and Meera has a son named Ravi, then Ravi is a cognate of Suresh. This is because the relationship chain includes a female (Meera). Similarly, a sister's child, or mother's brother, would also be cognates.

Agnates take precedence over cognates in terms of inheritance when no direct heirs (like children or parents) exist. Cognates inherit only if there are no agnates alive to claim the estate.

Intestate

Intestate means dying without a legally valid will. When a person dies intestate, their property and assets are distributed according to the laws of succession applicable in their jurisdiction, rather than their personal wishes.

For example, under the Hindu Succession Act, 1956, if a Hindu individual dies intestate:

a. The estate is first distributed among Class I heirs, such as spouse, sons, daughters, and mother.
b. If no Class I heirs are available, the estate goes to Class II heirs, followed by agnates (relatives connected solely through the male line) and then cognates (relatives connected through either male or female lineage).

This ensures that the deceased's property is inherited in a structured order by their legal heirs, even without a will.

Heir

Under Section 3(j) of the Hindu Succession Act, 1956, an heir is defined as any person, male or female, who is legally entitled to inherit property from a deceased Hindu individual. The Act provides a structured inheritance system by categorizing heirs into Class I and Class II, determining the order in which they inherit.

a. **Class I Heirs:** These include the closest family members such as the spouse, sons, daughters, and mother of the deceased. They have the first right to the inheritance, and the estate is divided equally among them.
b. **Class II Heirs:** If no Class I heirs are present, the estate goes to Class II heirs, which include relatives like the deceased's father, siblings, and grandparents, in a specific order of priority.

In the absence of both Class I and Class II heirs, inheritance goes to agnates (relatives connected solely through male lineage) and then to cognates (relatives connected through either male or female lineage). This structure ensures the property passes systematically to family members.

Descendants

Descendants refer to individuals who are directly related to an ancestor, specifically in a downward line of inheritance. In simple terms, descendants include children, grandchildren, great-grandchildren, and so on. Descendants are considered "lineal descendants" as they descend directly from a common ancestor.

In the Hindu Succession Act, 1956, descendants are significant in determining inheritance. They typically fall under Class I heirs, which includes sons, daughters, and the lineal descendants of these children (such as grandchildren). Descendants often have the first right to inherit the property when a Hindu individual dies intestate (without a will).

This classification ensures that the property passes to the closest bloodline, prioritizing descendants over more distant relatives.

2. Write Short Note on:

a. General Rules of Succession in case of a male Hindu dying intestate according to the Act.

When a male Hindu dies intestate (without leaving a will), the distribution of his property is governed by the Hindu Succession Act, 1956. The Act categorizes heirs into specific classes and provides a hierarchical order for succession:

i. **Class I Heirs**:

The first priority is given to Class I heirs. These include the deceased's immediate family members, such as his widow, sons, daughters, and mother. Each of these heirs is entitled to an equal share of the property. If a Class I heir has predeceased the individual but left descendants (e.g., grandchildren), those descendants will inherit the share that would have gone to their parent.

ii. **Class II Heirs:**

If there are no Class I heirs, the property then passes to Class II heirs. Class II heirs include a wider circle of relatives such as the father, siblings, and others. Unlike Class I, Class II heirs inherit in a ranked order, meaning that only heirs in the higher ranks inherit before passing down to lower ranks.

iii. **Agnates and Cognates:**

If there are neither Class I nor Class II heirs, the property is distributed among the deceased's agnates and cognates. Agnates are relatives related through a strictly male lineage, whereas cognates are relatives who may be connected through female lineage. Agnates have precedence over cognates in succession.

iv. **Escheat to the Government**:

In cases where there are no Class I heirs, Class II heirs, agnates, or cognates, the property escheats to the government. This means the property is claimed by the state if no legal heirs are found.

b) Rights of child in womb and the presumption in cases of simultaneous deaths

Under the Hindu Succession Act, 1956, a child in the womb (a foetus) is considered a legal person and is granted certain rights in the event of the death of a parent or relative. The rights are as follows:

- **Right to Inherit:**
  A child in the womb is considered to be "capable of taking a share in the inheritance" if born alive. This means that if a male Hindu dies intestate, and a child is conceived at the time of his death, that child will have the right to inherit property, provided the child is born alive. The child's rights are preserved, and it can inherit its share just like any other legal heir.
- **Inheritance through Representation**:
  If a child is in the womb at the time of the death of an ancestor and is born after the death, the child is treated as if it had been born before the death, inheriting a share in the property of the deceased parent or relative. This principle ensures that the child is not disadvantaged due to the timing of its birth.

Presumption in Cases of Simultaneous Deaths:

The Hindu Succession Act also provides guidelines in cases of simultaneous or near-simultaneous deaths of individuals, where it is unclear who survived whom. This situation can arise in cases of accidents or disasters, where two or more individuals die in such circumstances that the order of death is uncertain. In such cases, the law assumes the following:

- **Simultaneous Deaths (Section 21, Hindu Succession Act):**

The law presumes that the individuals involved in the simultaneous death scenario are treated as having died at the same time. This rule is particularly significant in cases where it is essential to determine who inherits the property of whom.

- **Distribution of Property:**

  In situations where two individuals, such as a husband and wife, die at the same time or in such a way that it is unclear who died first, their property is distributed as if they died simultaneously. If they were the heirs to each other's property, no one would inherit from the deceased person. In such cases, their respective properties would go to their next-of-kin as though both had died intestate.

- **Impact on Inheritance**:

  This presumption is particularly relevant in the case of spouses. For instance, if a husband and wife die together and both are heirs to each other's property, the property will be treated as though both have died intestate, and the distribution will occur according to the rules of succession outlined in the Act.

c) Disqualifications from Inheritance

Under the Hindu Succession Act, 1956, certain individuals are disqualified from inheriting the property of a deceased person. These disqualifications are aimed at ensuring that the inheritance remains within the family line and prevents those who have committed serious wrongs from benefiting from the deceased's estate.

The key disqualifications are:

i. **Killing or Attempted Killing of the Deceased**:

Murder or Attempted Murder: Any person who intentionally kills or attempts to kill the deceased, or is involved in causing the death of the deceased (whether directly or indirectly), is disqualified from inheriting the property.

Principle of "Slayer Rule": This rule is based on the principle that a person who causes the death of another should not benefit from the death. This disqualification applies even if the person is not convicted in a criminal court but has been involved in the murder or abetment of murder.

ii. Fraud or Undue Influence:

If a person has fraudulently induced the deceased to make a will, or has exerted undue influence on the deceased while they were alive, the disqualified individual will be barred from inheriting the property.

iii. Conversion to Another Religion:

Under Section 26 of the Hindu Succession Act, if a Hindu individual converts to another religion, they are disqualified from inheriting property under the Hindu Succession Act, as inheritance is based on the personal laws of the deceased. This applies to a person who, after conversion, seeks to inherit from their Hindu relatives.

iv. Alienation of Property During the Lifetime of the Deceased:

A person who alienates the property of the deceased during their lifetime without legal authority or through improper means may lose their right to inherit that property.

v. Incapacity Due to Mental Disorder:

While mental illness or incapacity does not automatically disqualify a person from inheriting, in cases where the person is incapable of managing their affairs (e.g., due to unsoundness of mind), it can impact their right to manage their inheritance. This, however, is subject to legal proceedings and the appointment of a guardian.

vi. Persons Found Guilty of Certain Acts:

A person who is found guilty of "dishonoring" the deceased's last wishes, or who engages in serious moral transgressions, may also face disqualification from inheriting the property.

In addition to these specific disqualifications, the Act also allows the court to apply other relevant legal principles to determine eligibility for inheritance. These disqualifications are designed to prevent individuals who have wrongfully or immorally interfered with the deceased's property or family from benefiting from the estate.

d) Testamentary Succession

The Hindu Succession Act, 1956 primarily governs intestate succession (when a person dies without a will) for Hindus, but it does not directly regulate testamentary succession (succession under a will). However, testamentary succession for Hindus is governed by the Indian Succession Act, 1925, which applies to all religious communities, including Hindus.

Here are key points regarding testamentary succession under the Hindu context:

1. **Creation of a Will:**

A Hindu can create a will to dispose of their property according to their wishes, overriding the rules of intestate succession provided by the Hindu Succession Act. The will must be made voluntarily by a person of sound mind, aged 18 or above, and witnessed by at least two persons.

2. **Rights of Heirs:**

   In testamentary succession, the testator has the freedom to decide who inherits their property, including non-family members. However, this right is subject to certain restrictions. For example, a Hindu's will cannot deprive their legal heirs (e.g., spouse, children) of their rightful share in the property.

3. **Executors**:

   The testator can appoint an executor to carry out the instructions in the will. The executor's role is to ensure that the property is distributed according to the testator's wishes after their death.

4. **Will Overrides Intestate Succession:**

   A valid will supersedes the general rules of intestate succession under the Hindu Succession Act. The property is distributed according to the will, rather than the statutory distribution rules for Hindus.

5. **Probate:**

   After the testator's death, the will may need to be probated in a court, which is the legal process of validating the will before the property is distributed. Once probated, the property is distributed as per the testator's instructions.

6. **Revocation of Will:**

   A testator can revoke or change their will at any time, as long as they follow the proper legal formalities, such as making a new will or destroying the old one.

In summary, while the Hindu Succession Act governs inheritance in the absence of a will, testamentary succession for Hindus is primarily governed by the Indian Succession Act, 1925, which gives individuals the right to decide how their property should be distributed after death.

e) Stridhan

Stridhan refers to the property that a Hindu woman owns and has complete control over, either from gifts, inheritance, or her own earnings. It is recognized under Hindu law as her absolute property, which she can freely dispose of during her lifetime or pass on after her death.

Sources of Stridhan:

Gifts from Family and Relatives: Gifts received by a woman from her parents, in-laws, or husband during important occasions like marriage, childbirth, and festivals constitute stridhan.

Gifts from Non-relatives: Any property or valuables received from friends or acquaintances are also considered stridhan.

Earnings and Savings: Any income from employment, business, or investments that a woman accumulates is regarded as her stridhan.

Inheritance: Property inherited by a woman from her family can also form part of her stridhan, depending on the specific inheritance laws applicable.

Property Acquired through Skill or Talent: Any assets acquired by a woman using her skill, such as artistic work, intellectual property, or business income, are also considered stridhan.

Rights Over Stridhan:

A woman has full ownership and control over her stridhan. She can use, sell, or gift it at her discretion. In case of separation or divorce, stridhan remains the woman's property, and her husband or in-laws have no claim over it.

Upon the woman's death, her stridhan is inherited by her legal heirs as per the Hindu Succession Act, 1956.

Protection of Stridhan:

Stridhan is legally protected under various laws, including the Hindu Succession Act and the Domestic Violence Act. Courts have upheld that it is a woman’s exclusive property and cannot be taken away by her husband or in-laws.

Stridhan plays an essential role in ensuring financial independence and security for Hindu women, allowing them ownership of property that remains solely under their control.

1. Discuss the general rule of succession in case of the property of a female Hindu dying intestate according to the Act.

The Hindu Succession Act of 1956 outlines specific rules for the inheritance of property belonging to a female Hindu who dies intestate, meaning without leaving a will. This Act brought significant changes, ensuring property rights for women and providing a structured

scheme of succession that differs from that of male Hindus. Here's an in-depth explanation of the general rule of succession in such cases, covered primarily in Sections 15 and 16 of the Act.

I. Hierarchy of Heirs

When a female Hindu dies intestate, her property is inherited according to a particular order of priority. The primary heirs are divided into categories as follows:

- Category 1: The deceased's sons and daughters, including children of any predeceased sons and daughters, and her husband.
- Category 2: If there are no heirs in Category 1, the property devolves upon the heirs of the husband.
- Category 3: In the absence of heirs in the above categories, the property then goes to the deceased's parents.
- Category 4: If none of the above heirs exist, the property moves to the heirs of the father.
- Category 5: Finally, if none of the heirs from the father's side are available, it goes to the heirs of the mother.

II. Source-Based Succession Rules

The Act also considers the origin of the property when determining succession. The source of property plays a crucial role in deciding the line of inheritance in specific cases:

Inherited Property from Parents: If the property was inherited by the female Hindu from her parents, it is prioritized to revert to her father's heirs in the absence of her direct descendants (children and grandchildren).

Inherited Property from Husband or Father-in-law: If the property was inherited from her husband or father-in-law, it devolves upon her husband's heirs if there are no children or grandchildren.

This distinction is made to ensure that inherited property returns to the family line from which it originated if the woman has no direct descendants, thereby preserving family assets.

III. Self-Acquired or Stridhana Property

For self-acquired property or Stridhana (a woman's personal property including gifts received before, during, or after marriage), the general rule of succession applies as outlined in the hierarchy above. In this case, her children and husband are given first priority, followed by

other heirs as per the general order. This rule highlights the woman's autonomy over her self-acquired assets, making her closest relations the primary inheritors.

IV. Absence of Heirs

If a female Hindu has no surviving relatives as per the categories outlined, her property "escheats" to the government. This means that in the absolute absence of heirs, her property is absorbed by the state.

V. Significance of These Rules

The Hindu Succession Act's rules for female intestate succession reflect a balance between a woman's rights over her property and the traditional norms of property passing within family lines. By distinguishing between property inherited from parents, the husband's family, and self-acquired property, the Act provides a nuanced approach that respects the origins of assets while ensuring women's rights. This was a significant departure from older customs that restricted women's property rights and inheritance options.

The succession rules under the Hindu Succession Act of 1956 provide a progressive framework that respects women's inheritance rights. The Act establishes a structured approach for succession based on the nature and origin of the property while allowing female Hindus autonomy over their assets. These rules ensure that property belonging to a female Hindu is passed on according to her closest familial ties, balancing personal inheritance rights with traditional family considerations.

2. What are important changes introduced by the Amendment Act of 2005? Discuss elaborately.

Changes brought by the Hindu Succession Amendment Act

The Hindu Succession (Amendment) Bill, 2004 was introduced with the idea of bring two major changes in the then-existing Hindu Succession Act, 1956 (hereinafter referred to as the Act). First being, bring a new section in place of the existing Section 6 in order to give equal rights to the daughters as to the sons and second being omission of section 23 which disentails the female rights to ask for partition in a dwelling house occupied by the intestate family with the male heirs initiating it. And finally, in 2005, certain changes brought in to the Hindu Succession Act, 1956 by way of this amendment.

These changes were brought in:

- **Section 4(2)**

The said section shall be omitted as the said provision provided that the act shall not override the provisions laid down in any other act to avert the division or fragmentation of the agricultural or sealing the ceiling or creation of tenancy rights in spite of such holding. Since this section excluded rights on agricultural lands from its purview and was regulated by the State- level tenure laws, it was creating a discriminatory in favour of women as the Women were not getting any entitlement or interest in the agricultural lands. So, with the removal of this provision, the women's interest in agricultural land as that of men is ensured.

- **Section 6**

The Hindu Succession (Amendment) Act, 2005, marked a significant milestone in women's property rights. Previously, Hindu women's rights varied based on marital status and property type. Daughters weren't entitled to inherit ancestral property, and wives had limited rights. The concept of stridhan, comprising sauadayika and non-sauadayika, governed women's property, with restricted ownership and disposal rights.

The Hindu Women's Rights to Property Act, 1937, recognized widows' rights, but with limitations. The Hindu Succession Act, 1956, still didn't acknowledge daughters as coparceners. Section 6's amendment changed this, making daughters coparceners by birth, with equal rights and liabilities.

This reform recognizes daughters' birthright to ancestral property, granting equal rights to seek partition. The amendment ensures retroactive application, protecting transactions made before December 20, 2004. The change promotes gender equality, overcoming historical limitations and recognizing women's property rights.

The amendment settled confusion surrounding women's limited rights, establishing absolute ownership and disposal rights. Women's property rights now depend on their status as daughters, wives, or mothers, and the type of property – ancestral, self-acquired, or matrimonial.

The Hindu Succession (Amendment) Act, 2005, has empowered daughters with economic independence, reduced gender disparity in inheritance, and aligned with constitutional

principles. This significant change has transformed the landscape of women's property rights in Hindu law.

- **Section 23**

Another landmark change brought in with this amendment was the omission of section 23 of the Act, which clearly discriminated against the female heirs to seek any partition in the dwelling house that the intestate left before the male heir chose to do so. This is the most evident form of prejudice created by the Hindu Succession act prior to 2005, as the female rights were restricted to dwell in that house that too only in case of, she being unmarried, separated, deserted or a widow and became contingent on the whim and fancies of the male members of the family.

- **Section 24**

Section 24 of the Hindu Succession Act, 1956, was omitted by the 2005 amendment, eliminating discrimination against three categories of women related to an intestate: widows of predeceased sons, predeceased sons' sons, and brothers. These women lost their rights to property upon remarriage, based on the outdated principle that a widow is the surviving half of her husband.

However, this didn't apply to the intestate's own wife, who retained rights even after remarriage. This disparity contradicted constitutional principles of equality and justice.

Before the amendment, the first two categories of widows were Class I heirs, while the third category was an agnate. Upon inheriting property, they became absolute owners under Section 15. Once invested, their rights couldn't be divested.

The omission of Section 24 corrected this inequality, ensuring that remarriage no longer affects a widow's property rights. This change aligns with constitutional values and promotes gender equality.

The 2005 amendment addressed a significant injustice, recognizing that women's rights shouldn't be compromised by remarriage. By removing Section 24, the legislature rectified a discriminatory provision, enhancing the protection of women's property rights.

This reform reinforces the principle that equality is essential to justice and the legislative system. The amendment ensures that women's rights are safeguarded, regardless of marital status or remarriage.

- **Section 30**

Under section 30 of the Act, the substitution of words from "disposed by him" to "disposed by him or by her" was done, in order to make it gender-neutral which is the objective of this amendment. And, certain additions were done to the schedule under the subheading of class I heir, in order to give equal treatment to lineal descendants of the daughters as to that of Hence, the introduction of The Hindu Succession (Amendment) Bill, 2004 which further got enforced in 2005 became the turning point of the turmoil of sexual discrimination existing in the Hindu Law.

Prakash v. Phulavati and Ors. (2016)[50]

The Supreme Court ruled that the amendment act is prospective, meaning that daughters became coparceners and had an equal share in joint Hindu family property from the date of the amendment's passing.

Vineeta Sharma vs. Rakesh Sharma & Ors. (2018)[51]

The Supreme Court ruled that daughters have equal coparcenary status with sons, regardless of when they were born or if their father was alive when the amendment came into effect.

Ganduri Koteshwaramma & Anr. v. Chakiri Yanadi & Anr.[52]

The Supreme Court ruled that a preliminary order passed by the court in a partition suit does not prejudice the rights of daughters conferred by the amendment.

The Hindu Succession (Amendment) Act, 2005 was passed solely to increase the rights of daughters and women to property and bring them to par with male family members. The inclusion of daughters as coparceners was the significant modification brought about by this amendment. So, as a result of the 2005 Amendment, the daughter of the family, whether she is married or not, is granted the same rights to the joint family property as the sons do. The daughters now share the same obligations and rights as the sons. To do this, Section 6 of the 1956 Act was changed. It also stated that female family members might now serve as the family's Karta. Daughters were now treated similarly as coparceners.

[50] AIR 2016 SUPREME COURT 769
[51] AIR 2020 SUPREME COURT 3717
[52] AIR 2012 SUPREME COURT 169

3. Explain the provisions relating to right of absolute property of women under the Act.

Women's Right to Property under Hindu Law

Introduction

The right of Hindu women to inherit property has been restricted from the beginning. In ancient times, women were not considered equal to men, their rights were also not equal to the male members of the society.

The denial of property rights to women can be traced back to religious practices, as they were considered incompetent to take part in sacrificial rituals and were prohibited from offering funeral cakes for the spiritual salvation of the common ancestor.

Hindu Woman's Right After the Hindu Succession Act, 1956

- In the contemporary age of evolving norms, it is acknowledged that in order to foster the nation's development, women should be granted equal status and rights alongside men.
- Hence, the first major legislation named Hindu Succession Act, 1956 (HSA) recognizing women's rights to inheritance of property came into existence, since then with the passage of time women's right of property inheritance is getting evolved.

Section 14 of the Hindu Succession Act, 1956

- **Section 14 - Property of a female Hindu to be her absolute property -**

  (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

  Explanation.— In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

- According to the provisions of Section 14 of HSA, absolute rights are conferred to women in any property possessed by her.
- The Act gives unfettered rights to women, including the right to dispose the property off. The property can be both movable as well as immovable.
- Section 14 of HSA grants any Hindu woman the ability to use her property without the husband's, father's, etc. approval or consent. She is free to transfer her property at any time, and she is free to spend the proceeds in any way she chooses.

Case Laws

Punithavalli Ammal v. Ramalingam and Anr.[53]

The Supreme Court held that Section 14(1) gives absolute right to women, and it cannot be curtailed in any manner by making any presumption or interpretation of the law.

It was further held that the date of possession of such property is irrelevant as women in possession of the property before the enactment of the provision would now be given absolute rights which were previously limited.

Agasti Karuna v. Cherukuri Krishnaiah (2000)[54]

The Andhra Pradesh High Court held in this case that women had absolute right over the property of the deceased husband under Section 14 of HSA.

Any transfer or alienation of such property by the wife after the commencement of HSA cannot be challenged by any of the heirs.

Section 15 of HSA

The general guidelines for the transfer of property intestate of a Hindu are covered in Section 15 of the 1956 Act. It specifies how the devolution will occur:

[53] 1964
[54] 2000 A I H C 84

- Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.
- Secondly, upon the heirs of the husband.
- Thirdly, upon the mother and father.
- Fourthly, upon the heirs of the father.
- Lastly, upon the heirs of the mother.

Section 30 of HSA

- According to Section 30 of HSA, any Hindu female has the entire legal authority to sell her belongings either through intestate or testamentary succession as per the right to full ownership.
- Previously only Hindu men were permitted to make a will to dispose of their possessions. Hindu women now have the same right.

Hindu Woman's Right after Hindu Succession (Amendment) Act, 2005

The Amendment of 2005

- Prior to the Hindu Succession Amendment Act 2005, sons enjoyed rights over the deceased father's property, whereas daughters could do so only till she was unmarried.
- Following the 174th Law Commission Report's recommendations, the Hindu Succession (Amendment) Act, 2005 was passed and made significant changes to the 1956 Act.

Now married women could inherit their father's property which was previously only enjoyed by the male members of the family.

- In other words, women could now become coparceners in a succession of the property of the patriarch and hold equal depositionary rights to the property.
- The Amendment to Section 6 of the Hindu Succession Act that deals with the Devolution of Coparcenary property has made this possible, and women can also inherit property as coparceners.

Section 6 of HSA-

- The 2005 Amendment repealed the long-standing discriminatory practice of excluding women from the coparcenary system. It was done by amending Section 6 of HSA.

As per Section 6(1) of amended HSA, like sons, the daughter of a coparcener will by birth become a coparcener in her own right.

This way Section 6(1) gives equal rights and liabilities to both sons and daughters of the coparcener.

- Share in coparcenary property-

  According to Section 6(3) of HSA, a deceased coparcener's stake in the assets of a Hindu Undivided Family will pass through testamentary or intestate succession. The devolution must occur in a manner that:

  - The daughter has the same share as that of a son.
  - Pre-deceased woman coparcener's share goes to her surviving children similarly in the same way it was given to her.

In modern times, a country's progress is contingent on ensuring that its women are not left behind. Women should enjoy equal rights and opportunities as men, not only in theory but also in reality. Only when a nation truly upholds gender equality in both principle and practice can it truly embark on a path of development.

Now that the daughters have been recognized as coparceners, their interest in the ancestral property is now protected, since the daughters now also have right by birth in the ancestral property as the sons, she cannot be denied her share in the property by testamentary disposition by the father.

V. The Special Marriage Act, 1954

1. SHORT NOTES: -

a. Procedure relating to solemnization of marriage under the Act.

The solemnization of a marriage is the official performance of a marriage ceremony, usually as part of a religious ceremony. The laws that govern solemnization of a marriage vary by state. For example, in some states, a mayor, magistrate, or judge may perform the ceremony, while in other states, a notary public officer may perform it.

In India, the solemnization of a marriage is the conduct of an official ceremony with the appropriate ritual between bride and bridegroom. Marriage laws include personal laws specific to various religions, as well as the Special Marriage Act, 1954 (hereinafter referred to as SMA or the Act). The SMA provides a secular and alternative law for individual of different faiths or those who opt out of religious traditions.

Section 4 under Chapter II of the Act provides certain conditions relating to solemnization of special marriage, which are as follows: -

i. Neither party has a spouse living
ii. Neither party is incapable of giving a valid consent or is of unsound mind or is insane
iii. The male has completed the age of twenty-one years and the fame the age of eighteen years
iv. The parties are not within the degrees of prohibited relationship.

Notice of intended marriage – both the parties to the marriage are to give a notice in writing in the prescribed form to the marriage officer of the district in which at least one of the parties to the marriage has been residing for a period of not less than thirty dates immediately preceding the date on which such notice is given. Notice will be published in the office of the Marriage Officer of the district within whose jurisdiction each of the parties to the marriage is permanently residing. The notice may be presented before the marriage officers by both parties in person or by registered post.

Solemnization of marriage – the marriage can be solemnized on expiry of 30 days after clearing objections if any filed. The validity for the notice is 3 months. Before the solemnization of marriage, the parties and three witnesses in the presence of the marriage

officer should sign declarations in the prescribed form. A fee of Rs.10 has to be paid for solemnization.

Place and form of solemnization- the marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance as the parties may desire and upon such conditions and the payment of such additional fees as may be prescribed.

Marriage Certificate – when the marriage has been solemnized, the Marriage Officer will enter a certificate in the form specified in the Fourth Schedule in a book kept with him known as the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

b. Marriage Officer

A marriage officer is a person appointed by the State Government to facilitate the registration of marriages and provide marriage certificates under the Special Marriage Act, 1954. The main responsibility of a marriage officer is to ensure that the court marriages are conducted in accordance with the Act. They are in charge of facilitating the legal registration of marriages between people of different religions, faiths, castes or creeds. The officer receives the notice of intended marriage from the parties who wish to marry under the Act and publishes the notice at the office of Marriage Officer and may also affix copy of the notice at a conspicuous place in the office.

The marriage officer investigates the objections filed by any person and decides whether to proceed with the marriage. If such objections are found to be invalid, the marriage may proceed as planned.

The marriage officer is also appointed as a Registrar of Marriages under the Act, and have the authority to solemnize marriages between parties belonging to different religions, castes or creeds. He also conducts the marriage ceremony in the presence of the parties and at least three witnesses. The marriage officer issues a marriage certificate to the parties as proof of the solemnization and registration of the marriage.

The marriage officer has the powers similar to a civil court under the CPC 1908, for the purpose of summoning witnesses, examining them on oath and compelling production of documents.

c. Marriage Certificate

Under the Act, a marriage certificate is a crucial legal document for marriages conducted outside traditional religious customs in India. The Act allows individuals of different religions, castes, or without religious affiliations to marry. To obtain a marriage certificate under this Act, couples must submit a Notice of Intended Marriage to the Marriage Officer in the jurisdiction where either party has resided for at least 30 days before applying.

Following this, a 30-day notice period allows objections to the marriage based on specific grounds, such as eligibility. If no valid objections are raised, the marriage is solemnized in the presence of three witnesses and the Marriage Officer. The Marriage Officer then issues the marriage certificate, which is legally binding and admissible as proof of marriage in legal proceedings. The certificate is important for purposes such as property rights, spousal privileges, visa applications and other purposes.

2. When does a marriage become void under the Act?

Under the Act, a marriage can be declared void if it does not meet certain legal requirements specified under Section 24. The marriage will be considered void (null and void, having no legal effect) in the following situations:

- **Bigamy:** If either party has a living spouse at the time of marriage, the marriage is void.
- **Prohibited Degrees of Relationship**: If the parties are related within degrees prohibited by law (such as close blood relations), unless such a relationship is allowed by their custom, the marriage is void.
- **Mental Capacity**: If either party is incapable of giving valid consent due to unsoundness of mind, or if either party suffers from a mental disorder making them unfit for marriage and procreation of children, the marriage will be void.
- **Age Requirement**: If the male party is under 21 or the female party is under 18 at the time of marriage, the marriage may be voidable at the option of the affected party.

A void marriage under the Act is considered as though it never legally existed, and the parties do not acquire spousal rights. However, a decree of nullity from a competent court may be necessary to formally declare the marriage void.

3. What is the importance of Marriage Notice Book and Publication of Notice under the Act?

The Act requires a marriage notice and a marriage notice book to ensure transparency and prevent forced or fraudulent marriages. The couple must give written notice to the marriage officer in the district where at least one of them has lived for at least 30 days. The notice must include the couple's intention to marry, required documents, and fees. The notice is then posted in a public place and in the couple's hometowns. The original and genuine copy of the notice must be submitted to the marriage notice book. The marriage officer records any objections in the book and reads them to the person making the objection. This requirement helps protect public interest, ensuring only legally valid marriages proceed under the Act, while safeguarding the rights of the individuals involved. Together, the Marriage Notice Book and publication requirement foster transparency, deter fraud, and safeguard individual rights and public interest, ensuring that only legally compliant marriages are solemnized under the Act.

4. Discuss the power of Marriage Officer under the Act?

Under the Act, the Marriage Officer holds specific powers to oversee, regulate, and solemnize marriages conducted outside traditional religious frameworks. The primary powers and duties of the Marriage Officer under the Act include the following:

- **Acceptance and Recording of Notice:**
  The Marriage Officer is responsible for receiving notices of intended marriage submitted by couples. Upon receiving a notice, they must record the details in the Marriage Notice Book and display the notice publicly, allowing time for objections as per Section 5 of the Act.
- **Inquiry and Publication of Notice**:
  After the notice is published, the Marriage Officer has the authority to inquire into objections raised by the public within the 30-day notice period. If an objection is submitted, the Marriage Officer must investigate its validity according to the grounds specified in the Act, such as bigamy, prohibited relationships, or mental incapacity.
- **Issuance of Marriage Certificates**:
  Upon satisfaction that the couple has met all legal requirements and that no valid objections remain unresolved, the Marriage Officer has the power to solemnize the marriage. This solemnization takes place in the presence of three witnesses, and after the

ceremony, the Marriage Officer issues an official marriage certificate, which is then entered into the marriage records. This certificate serves as legal proof of marriage.

- **Resolution of Objections:**
  If an objection is raised, the Marriage Officer has the power to make a decision on whether the objection is valid under the Act. If they find the objection to be baseless or outside the grounds permitted by law, the officer can reject it and proceed with solemnizing the marriage. However, if the objection is valid, they may withhold the marriage until the issue is resolved or until a court decision is obtained.
- **Referral to District Court**:
  In cases where the Marriage Officer is unable to resolve an objection or if they determine that there is a complex legal question, they can refer the matter to the district court. The court then has the authority to decide on the objection, either allowing or disallowing the marriage to proceed.
- **Solemnization of Marriage in Specified Manner**:
  The Marriage Officer oversees the marriage ceremony, which must comply with the requirements set out in the Act. The ceremony must be in the presence of the officer and witnesses, ensuring that the marriage is conducted according to the legal norms established by the Act.

In summary, the Marriage Officer under the Special Marriage Act holds a range of powers to ensure that marriages are legally sound, transparent, and publicly accountable. They serve not only as facilitators of marriage but also as gatekeepers of legality, safeguarding individual rights and public interest in the marriage process.

5. Mention the grounds of divorce under the Act.

India is a diverse country, home to many languages, cultures, customs and religions. To protect an individual's right to practice his/her own religion,[55] personal laws were enacted like Hindu Marriage Act 1955, the Indian Christian Marriage Act 1872, Muslim Personal Law (Shariat) Application Act, 1937 and the Parsi Marriage and Divorce Act 1936 for solemnization of Marriage and other related matters. Though these acts allow a person to get married by his own customs but how would an inter-religion be solemnized and how do these marriages be registered and recognized before government. Therefore, Special Marriage Act 1954 was

[55] Article 25 of the Constitution of India

enacted to provide a special form of marriage in these cases and for the registration of such and certain other marriages and for divorce. The grounds of divorce are set out under Section 27 of the Act. The District Court is the proper forum for filing a petition for divorce on the following grounds :-

I. **Adultery – vide Section 27 (1)(a)**

According to the provision (a) of clause (1) of Section 27 of the Act, the grounds of adultery will only require one instance of consenting extramarital sex. It should be noted that attempting to do so does not automatically entail adultery. Adultery is the matrimonial offence in which a married person and a person of the opposite sex, other than the wife has consensual sexual intercourse during the subsistence of the marriage, as held in ***Dawn Henderson v. D. Henderson***[56]. Although the Act lists adultery as a reason for divorce, it is supported by conventional religious principles because doing so frequently undermines the sanctity and stability of marriage.

II. **Desertion – vide Section 27(1)(b)**

The term, "Complete renunciation of martial obligations" is the definition of desertion. spouse's intentional withdrawal from the marriage for a continuous period of two years without a good reason can be the basis for a divorce petition. The abandoned spouse, however, must not have approved of such a departure. Intention to desert as well as actual physical or mental abandonment is required to establish the grounds for desertion. In the case of ***Geeta Jagdish Mangtani v. Jagdish Mangtani***,[57] on the grounds that the husband had inadequate income, the wife had abandoned him after seven months of marriage. She began to live with her parents and have birth to a child. She did not attempt to rejoin the husband and continued her on as a teacher. She knew about the husband's income status before marriage. Desertion on her part has been proved under the circumstances.

III. **Imprisonment – vide Section 27(1)(c)**

The other spouse may submit a divorce petition for this reason if the other spouse is convicted of an offense under the Indian Criminal Code for a period of seven years or longer. However, if the petition is submitted three years or more into a seven-year or longer sentence, the divorce order will not be issued.

IV. **Cruelty – vide Section 27(1)(d)**

[56] AIR 1970 Mad 104(SB)
[57] 2005 SC 3508

The 'cruelty' term is constructed according to the definition laid down in Russell v. Russell[58]. Cruelty, in accordance with this definition, is any act, conduct, or behavior that endangers another person's life, harms their health, or reputation, or causes them mental suffering. Here, behavior and conduct are more important than the spouse's intentions since such behavior and conduct must be so severe that no reasonable person should be able to endure it.

V. Insanity – vide Section 27(1)(e)

If one of the couples is having any kind of mental disorder to such an extent that it is not reasonable possibly to live with him, then the other one can file a petition for divorce. Nonetheless, if a person suffered a mental illness without telling their spouse before the marriage was solemnized, the marriage would be considered voidable.

VI. Venereal Illness – vide Section 27(1)(f)

Sexually transmitted illnesses are the most prevalent name for these conditions. There are adequate grounds for filing a divorce petition if one spouse has a venereal illness that is contagious and severe. Such a party, however, must not have gotten the illness from his or her spouse. The Act makes no mention of the disease's duration to subsist nor does it mention curability or lack of it. The Hon'ble Supreme Court[59] observed that under Section 27 of the Special Marriage Act, the party to a marriage has been given the right to obtain divorce if the other party to whom he or she was married was suffering front venereal disease in a communicable form. Therefore, it is person's moral and legal duty to inform the woman with whom the marriage is proposed that he was/is not physically healthy and that he was/is suffering from a disease which was likely to be communicated to her.

VII. Not heard of as being alive - vide Section 27(1)(h)

The respondent has not been heard by people who are closely related as being alive for not less than 7 years. If the person is not heard of for 7 years by those who would have naturally heard of him being alive, then it is presumed that the person is dead. The burden of proving the respondent is alive lies with the person who asserts it.

VIII. No resumption of cohabitation after decree of judicial separation -

The parties have not resumed cohabitation for at least one year after the passing of a decree of judicial separation The legislature's intention to give such space and time to the parties so there would be a possibility of reconciliation between the parties. In

[58] 1897 AC 395
[59] Mr. 'X' vs Hospital 'Z', Appeal (civil) 4641 of 1998

absence of any such change of mind of the parties, the legislature believes that for any further period there is no justification for keeping the right of cohabitation available to the parties.

IX. Mutual Consent –

The Special Marriage Act also takes a progressive step, keeping in mind the issues of unwanted litigation and overburdened Courts, by including a Mutual Divorce provision under Section 28, which states that a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, and that they have not been able to live together, and that they have mutually agreed that the marriage should be dissolved.

Both parties must file a motion with the court asking for a divorce ruling no later than six months after the petition is presented, but no later than eighteen months. The following considerations must be made by the court before issuing a divorce decree;

- The withdrawal of the appeal has not occurred.
- The marriage must be legally constituted in line with the Act's rules
- The veracity of the petition's allegations.
- That neither party's divorce-related consent was gained unfairly, coercively, or under influence.
- That the petition was filed within the time limit.

The Court will issue a decree for divorce once it is pleased with the aforementioned factors. It is crucial to remember that the petition can only be submitted after the marriage has been solemnized for a year, or from the date written on the wedding certificate in the marriage certificate book.

X. Only for the wife

The wife may seek divorce on any of the following grounds;

- If the husband has committed an offense relating to rape, sodomy, or bestiality. A decree of divorce shall, however, be granted only when the husband's guilt is proved before the court of law and he's convicted for committing such an offense.
- That in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since

the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

The Special Marriage Act has the unique feature o f enacting all the three theories o f divorce side by side, in Secs. 27 and 28. The Marriage Laws (Amendment) Act, 1976, has amended the grounds for divorce under the Hindu Marriage Act and the Special Marriage Act, and has tried to bring them at par with each other (though some differences still exist).

6. Explain the provisions relating to a valid marriage and registration under the Act.

In **Section 4** of the Special Marriage Act of 1954, certain essentials or conditions are required to be fulfilled in order to be eligible for marriage under SMA. In the absence of these prerequisites, the marriages would not be considered to have not been performed under this Act.

- The marriage is declared null and void if neither party has a living spouse (The act forbids polygamy) at the time of marriage.
- The parties involved in the wedlock should be of sound mind and should be able to take their own decisions.
- A party should not suffer from any type of mental disorder making him or her unfit for marriage as well as procreation of marriage.
- The marriage is also declared null and void if both male and female have not reached the legal age of majority which is 21 for male and 18 for female.
- The parties should not be within the degrees of prohibited relationship.

Under the Special Marriage Act, 1954 any 'two persons can perform a marriage. The inter – religious or inter – communal marriages are possible in India only under the Special Marriage Act, 1954. Under the Act a marriage has to be in a civil marriage form, though parties are free to perform any other additional ritual or religious ceremonies if they want to.[60]

60 Chapter II, Section 12(2), the Special Marriage Act, 1954.

The Act provides with conditions relating to solemnization of special marriage under Section 4. Firstly, neither party should have a spouse living at the time of the marriage.[61] Secondly, the physical and mental capacity of the both the parties should be as per the section requires.[62]

Thirdly, the age of the parties i.e. the male has completed the age of twenty-one and the female has completed the age of eighteen.[63] Fourthly, the parties are not within the degree of prohibited relationship provided that custom governing one of the parties permits such a marriage between them.[64] Violation of any of the conditions mentioned above will provide void status to the marriage.

The Special Marriage Act 1954 wholly changes the situation in respect of prohibited degrees in marriage. One of the conditions for an intended civil marriage to be solemnized under this Act is that "the parties are not within the degrees of prohibited relationship"[65]. The expression "degrees of prohibited relationship" is defined in Section 2 (b) of the Act as "a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule." Thus, the Act incorporates its own list of prohibited degrees in marriage, separate for men and women. Thus, all first cousins – paternal and maternal, parallel and cross – are placed by the Special Marriage Act in the category of prohibited marital relationship. The Act, however, does not place any second cousin in its two lists of prohibited degrees in marriage. The Act gives relaxation provided that custom governing one of the parties permits marriage between them. For example, under Muslim personal law marriage between the first cousins is allowed.

The Special Marriage Act, 1954 requires certain preliminaries to the solemnization of marriage. The marriage under this Act is essentially civil marriage and is required to complete the civil formalities. Parties who intend to get married under the Special marriage Act shall give a notice in writing in the specified form to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.[66] The Marriage Officer is required to keep all

61 Chapter II, Section 4(a), the Special Marriage Act, 1954.

62 Chapter II, Section 4(b), the Special Marriage Act, 1954.

63 Chapter II, Section 4(c), the Special Marriage Act, 1954.

64 Chapter II, Section 4(d), the Special Marriage Act, 1954.

65 Chapter II, Section 4(d), the Special Marriage Act, 1954.

66 Chapter II, Section 5, the Special Marriage Act, 1954.

the notices with the record of his office and to enter a true copy of every such notice in Marriage Notice Book and the Book is open to all for inspection.[67] The notice of marriage is also to be published by the Marriage Officer.[68] Before the expiration of thirty days from the date on which the notice was published any person can object to the marriage that it would contravene any of the conditions mentioned in section 4 of the act.[69] After the expiry of thirty days from the date on which the notice was published the marriage may be solemnized. Before the marriage is solemnized the parties and three witnesses shall sign a declaration in the form give below, and the declaration shall be counter signed by the Marriage Officer.[70] Thus the marriage is solemnized after completing all the steps mentioned above.

Section 13 of the Special Marriage Act, 1954 provides compulsory registration of the marriage without which a marriage cannot be regarded as valid. Section 13 states that after the marriage has been solemnized the Marriage Officer shall enter a certificate in the Marriage Certificate Book and this shall be signed by the parties to the marriage and the three witnesses and this shall be conclusive evidence of the marriage. Section 15 provides registration of marriages celebrated in other forms. For registration of marriage the parties have completed the age of twenty-one years at the time of registration.[16] Thus creating an age barrier for the registration of marriage.

Importance of Registration of Marriages:

For the first time, in 1962, the need for compulsory registration was identified way back in 1962 at Convention on Consent to marriage, minimum age for marriage and registration of marriages. India at that time understood that a compulsory registration of marriages can play a very important role for the development of the nation by curbing certain evil practices like child marriage, marriages without consent etc. Different personal laws are often being misused by finding a loophole in them for example, entering in a bigamous relation by conversion and compulsory registration can help prevent them. The only reason behind not signing of this convention was the vast diversity of customs and religions in the nation and fitting everything under one roof of legislation seemed impractical at that point of time.

67 Chapter II, Section 6(1), the Special Marriage Act, 1954.
68 Chapter II, Section 6(2), the Special Marriage Act, 1954.
69 Chapter II, Section 7, the Special Marriage Act, 1954.
70 Chapter II, Section 11, the Special Marriage Act, 1954. 16
Chapter II, Section 15(d), the Special Marriage Act, 1954

In ***Kanagavalli and ors. vs. Saroja and ors (2002)***[71]**,** the madras high court came down very heavily upon the legislature by suggesting them with strong words to make registration under HMA compulsory as it does not provide for compulsory registration which has made prosecution for bigamy difficult and has landed many women in trouble where her status of wife and recognition in society is withdrawn. Men without any fear enters in a bigamous relation and deserts the first wife. The court also observed that many men are influenced by visual media, movies etc. which has created an impression that exchanging garlands, thali etc. will constitute a valid marriage.

For the first time in 2006, Supreme Court in ***Seema v. Ashwani***[72] took the cognizance on this issue and called upon all the state governments and the central government and asked the states to make laws providing for compulsory registration of the marriages which are religion/caste neutral and provides for registration of marriages solemnized by any prevalent customs within the country. One single register throughout the country or throughout the state should be maintained to keep the records of all the marriages solemnized within a country or state. The parties who register their marriage should get a presumption of their marriage being a valid marriage and the presumption of invalid marriage for those who don't register.

The Supreme court also underlined the importance of registration as pointed out by national commission for women in their draft bill. The object and intent behind the bill for compulsory registration is: one to prevent child marriages as registration will require a valid proof of age, two to prevent bigamous or polygamous marriages by sending notices to the previous wives if any, three to prevent forceful marriages without the consent of the either party and helps protecting the fundamental right of right to marry the person of his/her choice, four to deter man from deserting as he would held liable to pay maintenance under Section 125 CrPC when there is a proof of marriage which he can't easily dispute.

Sometime marriage certificates can help parties and courts up to a great extent in solving cases easily. The case of ***Sangita v. Gurjeet Singh***[73] is a case where the widow filed an accident claim petition of his deceased husband before the Motor Accident Claims Tribunal and her marriage with the deceased was disputed by the tribunal and the high court in the wife's appeal observed that had they registered their marriage this issue of validity could have been solved easily.

[71] AIR 2002 MADRAS 73
[72] 2006 (2) SCC 578
[73] (2010) SCC Online P&H 9538.

In the case of Vikram Aditya Singh, it was held that refusal to register a marriage is bad in the eyes of law when you deny registration on the grounds of unnecessary technicalities like in the present case registration was denied because the parents of a contracting party were residing outside the jurisdiction of the marriage registrar.

The registration also helps in resolving the issues relating to the succession and in one such case i.e. ***Sushma v. Malti*** [74]Bombay High Court held that a marriage certificate can become a strong proof for the validity of the marriage when the same is disputed because Section 8, HMA begins with the words, "for the purpose of facilitating the proof of Hindu marriages." Although the certificate of marriage cannot be said to be a conclusive proof of marriage and can always be challenged but it can make your case stronger if you are arguing for a marriage to be held valid. It can also help to prevent unscrupulous third parties/relatives who with ulterior motives comes and challenge the validity of a marriage.

Compulsory registration is necessary to protect the interest of the parties in marriage. Compulsory registration will help counter some of the problems associated with nonregistration, like bigamy, child marriage and desertion. The registration under Hindu Marriage Act, 1955 should be made compulsory and every state should make laws for compulsory registration in their state as provided under section 8 of Hindu Marriage Act. In the Muslim society there is a system of private registration of marriages by the kazis, which needs to be streamlined and linked with registration of marriage with State Registry. In very few States all marriages irrespective of the law under which these may have been solemnized have to be compulsorily registered. The majority of States have not enacted any general law on marriage registration applicable to all communities. In those States where there are laws for compulsory registration of all marriages, such laws are faulty and ineffective. People generally do not adhere to them, as non-registration entails only fine of a petty amount. So, punishment for non – registration of marriage should be strengthened and the laws should be strictly and effectively implemented.

7. What is the importance of Notice of an intended Marriage?

The "Notice of an Intended Marriage" in the Special Marriage Act, 1954, serves as a crucial step in solemnizing a marriage under this Act, which applies to interfaith, inter-caste, and civil marriages across India. The notice is central to the legal process because it ensures

[74] 2009 (111) Bom LR 3974

transparency, accountability, and legal formality for individuals entering into marriage. Here's a closer look at its importance:

1. **Public Declaration and Accountability**:
   Section 5 of the Special Marriage Act requires the parties to give a written notice of their intended marriage to the Marriage Officer of the district in which at least one of them has resided for 30 days prior. This public notice serves as a formal declaration of their intent to marry, which is then displayed publicly at the Marriage Officer's office. This step invites any objections from the public, especially those who may have a valid legal reason to oppose the marriage (e.g., if one party is already married, is underage, or if the marriage would fall within prohibited relationships). This process helps maintain accountability and transparency in the marriage process.
2. **Verification of Legal Requirements**:
   By notifying the Marriage Officer, the parties enable an official verification of their eligibility under the Act. The Act mandates specific conditions for marriage, such as age, mental competence, and absence of a living spouse. The notice period allows the authorities and the public to confirm that these criteria are met, thus protecting both parties from potential fraud, forced marriage, or any undisclosed marital status.
3. **Preventing Fraud and Misrepresentation**:
   The 30-day notice period provides time for anyone aware of any legal impediments to come forward. This period is essential for preventing cases of misrepresentation or fraudulent marriages, which could lead to significant consequences, such as financial deception or abuse. This safeguard is especially crucial in interfaith or inter-caste marriages, which may sometimes face familial or societal opposition.
4. **Legal Objections**:
   During the 30-day period, any person may object to the marriage if they believe it violates any conditions of the Act. The Marriage Officer is obligated to investigate such objections under Section 8. If the objections are found to be valid, the marriage cannot proceed unless they are resolved. This system allows for a lawful resolution of any potential issues, ensuring that marriages are conducted fairly and in accordance with legal requirements.
5. **Evidence of Legal and Voluntary Marriage**:
   The notice serves as official documentation of the couple's intention and legal compliance with marriage formalities. In the event of any disputes or questions regarding the marriage's legitimacy, the notice and the subsequent registration act as concrete legal proof that the

marriage was entered into voluntarily and lawfully. This documentation can protect both parties' rights and ensure recognition of the marriage in the eyes of the law.

6. **Protection Against Forced Marriages**:

   In cases where there may be concern about coercion or forced marriages, the notice period provides both individuals the opportunity to reconsider their decision. The formal procedure and the public nature of the notice can act as a deterrent to any coercion or undue pressure from families or communities, offering some protection to those who might be vulnerable to such influences.

In summary, the Notice of an Intended Marriage in the Special Marriage Act, 1954, is essential for verifying eligibility, safeguarding the rights and welfare of the parties, maintaining transparency, and preventing potential legal or personal issues. This procedural safeguard is a cornerstone of the Act, ensuring that the marriage is not only solemnized legally but also publicly and in good faith.

VI. THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

1. What are the conditions of a valid adoption under the Act?

Under the Hindu Adoption and Maintenance Act, 1956, the following are the conditions of a valid adoption:

Hindu Adoption and Maintenance Act, 1956

- **Age:** The adopter must be at least 21 years older than the child.
- **Marital Status**: A male adopter must be married, unless he is a bachelor. A female adopter can be unmarried.
- **Capacity:** The adopter must have the capacity to give in to adoption.
- **Consent:** The biological parents or guardian must give consent for the adoption.
- **Child's Age**: The child must be below 15 years of age.
- **Single or Joint Adoption**: A single person or a married couple can adopt a child.

In every adoption, the following conditions must be complied with:

1. if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
2. if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
3. if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
4. if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
5. the same child may not be adopted simultaneously by two or more persons;
6. the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth, or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.

2. Can a step father or an adoptive mother give a child up for adoption?

Under the Hindu Adoption and Maintenance Act, 1956, the question of whether a stepfather or an adoptive mother can give a child in adoption is governed by specific provisions.

Hindu Adoption and Maintenance Act, 1956

Section 9 of the Act states that a child cannot be given in adoption by a person who is not the child's parent or guardian. However, an adoptive mother can give a child in adoption, but only with the consent of the adoptive father, if any.

In the case of a stepfather, the Act does not explicitly permit or prohibit a stepfather from giving a child in adoption. However, since the stepfather is not the biological parent, it is unlikely that he would be permitted to give the child up for adoption without the consent of the biological parent.

Court Judgments and Precedents

There have been several court judgments and precedents on this issue. For example, in the case of ***Lakshmi Kant Pandey vs. Union of India (1984)***[75]**,** the Supreme Court held that a stepfather cannot give a child up for adoption without the consent of the biological mother.

In conclusion, while the Hindu Adoption and Maintenance Act, 1956, has certain restrictions on who can give a child up for adoption, the Juvenile Justice (Care and Protection of Children) Act, 2015, provides more flexibility. A stepfather or an adoptive mother can give a child up for adoption through a Specialised Adoption Agency and with the permission of the Court. However, the Court's primary consideration must always be the best interests of the child.

3. 'X', a male Hindu has three wives namely 'W'I, 'W'2, and 'W'3. 'X' adopts a son with the consent of 'W'1, and 'W'3. But 'W'2 does not give her consent. Is the adoption valid?

Under the Hindu Adoption and Maintenance Act, 1956, the validity of an adoption is governed by specific provisions. In this scenario, 'X', a male Hindu, has three wives, namely 'W'1, 'W'2, and 'W'3, and adopts a son with the consent of 'W'1 and 'W'3, but without the consent of 'W'2.

Section 7 of the Hindu Adoption and Maintenance Act, 1956

Section 7 of the Act states that no person shall be capable of giving in adoption a child unless the person is the father or mother or guardian of the child. Furthermore, the section requires that the person giving in adoption must have the capacity to give in adoption.

Section 8 of the Hindu Adoption and Maintenance Act, 1956

Section 8 of the Act states that the father alone has the right to give in adoption, but he cannot do so without the consent of the mother, unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Section 8(2) of the Hindu Adoption and Maintenance Act, 1956

[75] 1984 SCR (2) 795

Section 8(2) of the Act states that if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, the mother alone can give in adoption.

Section 8(3) of the Hindu Adoption and Maintenance Act, 1956

Section 8(3) of the Act states that if the mother is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, the father alone can give in adoption.

Applicability to Polygamous Marriages

In the case of a polygamous marriage, where the husband has multiple wives, the consent of all the wives is not required for adoption. However, the husband must obtain the consent of the wife with whom he is living at the time of adoption.

Validity of the Adoption in the Given Scenario

In the given scenario, 'X' adopts a son with the consent of 'W'1 and 'W'3, but without the consent of 'W'2. Since 'W'2 is one of the wives of 'X', her consent is not required for the adoption. However, 'X' must have obtained the consent of the wife with whom he is living at the time of adoption.

Assuming that 'X' is living with 'W'1 at the time of adoption, and 'W'1 has given her consent, the adoption would be valid. However, if 'X' is living with 'W'2 at the time of adoption, and 'W'2 has not given her consent, the adoption may be challenged.

In conclusion, the validity of the adoption in the given scenario depends on the specific circumstances, including the wife with whom 'X' is living at the time of adoption. While the consent of all the wives is not required, the husband must obtain the consent of the wife with whom he is living at the time of adoption.

4. Solve the following Problems -

(i) A widow adopts a child and gets married subsequently. What will be the relationship between the child and the father?

Section 12 of the Hindu Adoption and Maintenance Act, 1956

Section 12 of the Act states that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption.

Relationship between the child and the father

Since the widow adopted the child before getting married, the child's adoptive mother is the widow. After the widow's marriage, the child's relationship with the stepfather (the widow's husband) would be that of a stepchild and stepfather. However, the child's adoptive mother remains the widow.

(ii) 'X', a male Hindu aged about 35 years, wants to adopt a girl child of 15 years. Can 'X' take the child in adoption?

Section 10 of the Hindu Adoption and Maintenance Act, 1956

Section 10 of the Act states that a male Hindu can adopt a child if he has no Hindu son, son's son, or son's son's son living at the time of adoption.

Section 11 of the Hindu Adoption and Maintenance Act, 1956

Section 11 of the Act states that a male Hindu can adopt a child if the child is not the child of his wife or of any other woman who is a member of his family.

Age difference

The Act does not specify a minimum or maximum age difference between the adoptive parent and the adopted child. However, the adoptive parent must be at least 21 years older than the adopted child.

'X' can take the child into adoption if he meets the conditions specified in Sections 10 and 11 of the Act. However, the Court may consider the significant age difference between 'X' and the child and may scrutinize the adoption to ensure it is in the best interests of the child.

(iii) 'Y' a female Hindu wants to adopt 'D', a married girl. Can 'Y' adopt 'D'?

Section 10 of the Hindu Adoption and Maintenance Act, 1956

Section 10 of the Act states that a female Hindu can adopt a child if she has no Hindu son, son's son, or son's son's son living at the time of adoption.

Section 11 of the Hindu Adoption and Maintenance Act, 1956

Section 11 of the Act states that a female Hindu can adopt a child if the child is not the child of her husband or of any other person who is a member of her family.

Married girl

The Act does not prohibit the adoption of a married girl. However, the Court may consider the implications of the adoption on the girl's marriage and her relationship with her husband and in-laws.

'Y' can adopt 'D' if she meets the conditions specified in Sections 10 and 11 of the Act. However, the Court may scrutinize the adoption to ensure it is in the best interests of 'D' and her family.

(iv) 'M', a male Hindu has three wives namely. 'F'1, 'F'2, and 'F'3. 'M' adopts a son with the consent of 'F'1 and 'F'3, But, 'F'2 does not give her consent. Is the adoption valid?

Section 7 of the Hindu Adoption and Maintenance Act, 1956

Section 7 of the Act states that no person shall be capable of giving in adoption a child unless the person is the father or mother or guardian of the child.

Section 8 of the Hindu Adoption and Maintenance Act, 1956

Section 8 of the Act states that the father alone has the right to give in adoption, but he cannot do so without the consent of the mother, unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Consent of all wives

In the case of a polygamous marriage, the consent of all the wives is not required for adoption. However, the husband must obtain the consent of the wife with whom he is living at the time of adoption.

The adoption is valid if 'M' obtained the consent of the wife with whom he is living at the time of adoption. However, if 'M' is living with 'F'2 at the time of adoption, and 'F'2 did not give her consent, the adoption may be challenged.

(v) 'M', a male Hindu aged about 35 years wants to adopt a girl child of 15 years. Can 'M' take the child in adoption?

Section 10 of the Hindu Adoption and Maintenance Act, 1956

Section 10 of the Act states that a male Hindu can adopt a child if he has no Hindu son, son's son, or son's son's son living at the time of adoption.

Section 11 of the Hindu Adoption and Maintenance Act, 1956

Section 11 of the Act states that a male Hindu can adopt a child if the child is not the child of his wife or of any other woman who is a member of his family.

Age difference

The Act does not specify a minimum or maximum age difference between the adoptive parent and the adopted child. However, the adoptive parent must be at least 21 years older than the adopted child.

'M' can take the child in adoption if he meets the conditions specified in Sections 10 and 11 of the Act. However, the Court may consider the significant age difference between 'M' and the child and may scrutinize the adoption to ensure it is in the best interests of the child.

(vi) 'F', a female Hindu wants to adopt 'D', a married girl. Can 'F' adopt 'D'?

Section 10 of the Hindu Adoption and Maintenance Act, 1956

Section 10 of the Act states that a female Hindu can adopt a child if she has no Hindu son, son's son, or son's son's son living at the time of adoption.

Section 11 of the Hindu Adoption and Maintenance Act, 1956

Section 11 of the Act states that a female Hindu can adopt a child if the child is not the child of her husband or of any other person who is a member of her family.

Married girl

The Act does not prohibit the adoption of a married girl. However, the Court may consider the implications of the adoption on the girl's marriage and her relationship with her husband and in-laws.

'F' can adopt 'D' if she meets the conditions specified in Sections 10 and 11 of the Act. However, the Court may scrutinize the adoption to ensure it is in the best interests of 'D' and her family.

(vii) A widow adopts a child and gets married subsequently. What will be the relationship between the child and the father?

Section 12 of the Hindu Adoption and Maintenance Act, 1956

Section 12 of the Act states that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption.

Relationship between the child and the father

Since the widow adopted the child before getting married, the child's adoptive mother is the widow. After the widow's marriage, the child's relationship with the stepfather (the widow's husband) would be that of a stepchild and stepfather. However, the child's adoptive mother remains the widow.

(viii) 'M', a male Hindu has three wives namely, 'F1'. 'F2' and 'F3'. 'M' adopts a son with the consent of all the wives. What is the relationship between the child and the mother?

Section 12 of the Hindu Adoption and Maintenance Act, 1956

Section 12 of the Act states that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption.

Relationship between the child and the mother

Since 'M' adopted the son with the consent of all the wives, the child's adoptive mother would be all three wives, namely, 'F1', 'F2', and 'F3'. The child would be entitled to inherit property from all three mothers and would have the same rights and privileges as a natural-born child.

5. Can an adoption be cancelled?

Under the Hindu Adoption and Maintenance Act, 1956, an adoption can be cancelled or revoked under certain circumstances.

Section 17 of the Hindu Adoption and Maintenance Act, 1956

Section 17 of the Act states that an adoption can be revoked or cancelled by the adoptive father or mother, or by the adopted child, if the adoption was obtained by fraud, coercion, or undue influence.

Section 18 of the Hindu Adoption and Maintenance Act, 1956

Section 18 of the Act states that an adoption can be revoked or cancelled by the adoptive father or mother, or by the adopted child, if the adopted child has committed any act which, if committed by a natural-born child, would have entitled the adoptive father or mother to disown the child.

Procedure for Revocation or Cancellation of Adoption:

The procedure for revocation or cancellation of adoption is as follows:

1. **Filing of Petition**: A petition for revocation or cancellation of adoption can be filed by the adoptive father or mother, or by the adopted child, in the Court having jurisdiction.
2. **Notice to Parties:** The Court shall issue notice to all parties concerned, including the adoptive parents, the adopted child, and the biological parents, if any.
3. **Hearing:** The Court shall hear the parties and consider the evidence adduced.
4. **Order:** If the Court is satisfied that the adoption was obtained by fraud, coercion, or undue influence, or that the adopted child has committed any act which, if committed by a natural-born child, would have entitled the adoptive father or mother to disown the child, the Court may pass an order revoking or cancelling the adoption.

In conclusion, an adoption can be cancelled or revoked under certain circumstances, including fraud, coercion, or undue influence, or if the adopted child has committed any act which, if committed by a natural-born child, would have entitled the adoptive father or mother to disown the child. The procedure for revocation or cancellation of adoption involves filing a petition in the Court having jurisdiction, serving notice to all parties concerned, and hearing the parties and considering the evidence adduced.

6. Discuss the capacity of a Hindu male and Hindu female to adopt a child.

Under the Hindu Adoption and Maintenance Act, 1956, the capacity of a Hindu male and Hindu female to adopt a child is governed by specific provisions.

Capacity of a Hindu Male to Adopt:

Section 7 of the Hindu Adoption and Maintenance Act, 1956

Section 7 of the Act states that a Hindu male can adopt a child if he has no Hindu son, son's son, or son's son's son living at the time of adoption.

Section 8 of the Hindu Adoption and Maintenance Act, 1956

Section 8 of the Act states that a Hindu male can adopt a child if the child is not the child of his wife or of any other woman who is a member of his family.

Capacity of a Hindu Female to Adopt:

Section 7 of the Hindu Adoption and Maintenance Act, 1956

Section 7 of the Act states that a Hindu female can adopt a child if she has no Hindu son, son's son, or son's son's son living at the time of adoption.

Section 8 of the Hindu Adoption and Maintenance Act, 1956

Section 8 of the Act states that a Hindu female can adopt a child if the child is not the child of her husband or of any other person who is a member of her family.

Comparison of Capacity to Adopt between Hindu Male and Female:

While both Hindu males and females have the capacity to adopt a child, there are certain differences in their capacity to adopt. A Hindu male can adopt a child only if he has no Hindu son, son's son, or son's son's son living at the time of adoption, whereas a Hindu female can adopt a child regardless of whether she has a son or not. However, in both cases, the child to be adopted must not be the child of the spouse or of any other person who is a member of the family.

In conclusion, the capacity of a Hindu male and Hindu female to adopt a child is governed by specific provisions under the Hindu Adoption and Maintenance Act, 1956. While both Hindu males and females have the capacity to adopt a child, there are certain differences in their capacity to adopt. The adoptive parent must meet the conditions specified in the Act, and the adoption must be made in the best interests of the child.

7. Discuss the validity of following Adoptions

i. A Hindu male adopts a child of 16 yrs.

Section 10 of the Hindu Adoption and Maintenance Act, 1956

Section 10 of the Act states that a Hindu male can adopt a child if the child is not more than 15 years of age.

Validity

Since the child is 16 years old, which is more than the prescribed age limit of 15 years, the adoption is invalid.

ii. A Hindu female of 28 years adopts a male child of 10 year age

Section 7 of the Hindu Adoption and Maintenance Act, 1956

Section 7 of the Act states that a Hindu female can adopt a child if she has no Hindu son, son's son, or son's son's son living at the time of adoption.

Validity

Since there is no restriction on the age of the adoptive mother, and the adoptive mother is a Hindu female, the adoption is valid.

iii. A Hindu male adopted a child by paying rupees one lakh to the person giving in adoption.

Section 17 of the Hindu Adoption and Maintenance Act, 1956

Section 17 of the Act states that an adoption can be revoked or cancelled if it was obtained by fraud, coercion, or undue influence.

Validity

Since the adoption was obtained by payment of money, which is a form of undue influence, the adoption is invalid.

iv. 'A', a Hindu adopts 'B' an orphan child with the consent of the orphanage authorities.

Section 9 of the Hindu Adoption and Maintenance Act, 1956

Section 9 of the Act states that a person can give a child up for adoption only if the person is the father, mother, or guardian of the child.

Validity

Since the orphanage authorities are the guardians of the child, and they have given their consent for the adoption, the adoption is valid.

v. A divorced woman adopts two sons

Section 7 of the Hindu Adoption and Maintenance Act, 1956

Section 7 of the Act states that a Hindu female can adopt a child if she has no Hindu son, son's son, or son's son's son living at the time of adoption.

Validity

Since the divorced woman is a Hindu female, and there is no restriction on the number of children she can adopt, the adoption of two sons is valid.

8. (a) Define 'Maintenance and discuss the provisions regarding maintenance of wife under the Hindu Adoption and Maintenance Act, 1956.

Definition of 'Maintenance'

Maintenance refers to the financial support provided by one person to another, typically a family member, to meet their basic needs and living expenses.

Provisions regarding Maintenance of Wife under the Hindu Adoption and Maintenance Act, 1956.

The Hindu Adoption and Maintenance Act, 1956, provides for the maintenance of a wife under Section 18 of the Act.

Section 18 of the Hindu Adoption and Maintenance Act, 1956

Section 18 of the Act states that a Hindu wife is entitled to be maintained by her husband during her lifetime. The section also provides that the husband's liability to maintain his wife is not affected by his becoming a sannyasi or by his ceasing to be a Hindu.

Section 19 of the Hindu Adoption and Maintenance Act, 1956

Section 19 of the Act states that the wife's entitlement to maintenance is not affected by her own fault or neglect, unless such fault or neglect is of such a nature that it would justify the husband in withholding maintenance.

(b) Who are dependents under the Hindu Adoption and Maintenance Act.

Section 21 of the Hindu Adoption and Maintenance Act

Section 21 of the Act defines dependents as including the wife, minor sons, unmarried daughters, and widowed daughters of a Hindu.

List of Dependents:

- **Wife**: A Hindu wife is entitled to be maintained by her husband during her lifetime.
- **Minor Sons:** A Hindu minor son is entitled to be maintained by his father until he reaches the age of majority.
- **Unmarried Daughters**: A Hindu unmarried daughter is entitled to be maintained by her father until she gets married.
- **Widowed Daughters**: A Hindu widowed daughter is entitled to be maintained by her father or her husband's family, as the case may be.

9. a) Discuss the nature and object of Adoptions under the Hindu Adoptions and Maintenance Act, 1956.

The Hindu Adoptions and Maintenance Act, 1956, is a legislation that governs the law of adoption among Hindus in India. The Act provides for the nature and object of adoptions, which are as follows:

The object of adoption is to provide a child to a childless person, and to provide a parent to a parentless child.

The nature of adoption is to create a parent-child relationship between the adoptive parent and the adopted child, which is similar to the relationship between a natural parent and child.

Section 3 of the Hindu Adoptions and Maintenance Act, 1956

Section 3 of the Act defines adoption as the process by which a person takes another person as his or her child, and the person so taken is called the adopted child.

(b) Which is the necessary ceremony for Adoption?

The necessary ceremony for adoption under the Hindu Adoptions and Maintenance Act, 1956, is the giving and taking ceremony, which is also known as "datta homam".

Section 9 of the Hindu Adoptions and Maintenance Act, 1956

Section 9 of the Act provides that no adoption shall be valid unless the person giving the child in adoption and the person taking the child in adoption have performed the necessary ceremonies.

(c) Is registration necessary for valid Adoption?

Registration of adoption is not mandatory under the Hindu Adoptions and Maintenance Act, 1956. However, it is desirable to register the adoption deed to avoid any disputes or controversies in the future.

Section 16 of the Hindu Adoptions and Maintenance Act, 1956

Section 16 of the Act provides that every adoption made under the Act shall be registered in the manner prescribed by the State Government.

10. a) Explain the validity of the following situations:

1. Two sisters, Gita and Sita, adopt a male child.

Section 7 of the Hindu Adoptions and Maintenance Act, 1956

Section 7 of the Act provides that a Hindu male or female can adopt a child if the person adopting has no Hindu son, son's son, or son's son's son living at the time of adoption.

Validity

The adoption is invalid because two sisters cannot jointly adopt a child. The Act does not permit joint adoption by two or more persons.

2. A Hindu male aged 32 years adopts a female child of 12 years.

Section 10 of the Hindu Adoptions and Maintenance Act, 1956

Section 10 of the Act provides that a Hindu male can adopt a child if the child is not more than 15 years of age.

Validity

The adoption is valid because the child is within the prescribed age limit of 15 years.

(b) Explain the state and position of an adopted child in respect of inheritance and maintenance.

An adopted child has the same rights and privileges as a natural-born child in respect of inheritance and maintenance.

Section 12 of the Hindu Adoptions and Maintenance Act, 1956

Section 12 of the Act provides that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption.

Inheritance

An adopted child has the same right to inherit the property of the adoptive parents as a natural-born child. The adopted child is entitled to a share in the property of the adoptive parents, and the adoptive parents are entitled to inherit the property of the adopted child.

Maintenance

An adopted child is entitled to maintenance from the adoptive parents, and the adoptive parents are entitled to claim maintenance from the adopted child if they are unable to maintain themselves.

11. Explain the nature and object of Adoptions under the Act.

Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of the adoptive parents with all the rights and privileges and responsibilities that are attached to a biological child.

HAMA, 1956

- This is the first enactment on the subject of adoption passed by our Parliament.
- This Act has no operation beyond the territories of India.
- This Act applies to any person who is a Hindu and also applies to Hindus domiciled in the territories to which the Act extends who are outside the said territories.

Section 6 - Requisites for Adoption

- The person who is adopting must have the capacity and the right to adopt.
- The person who is giving the child in adoption must have the capacity to give.
- The person who is being adopted must be eligible to be adopted.
- The adoption must satisfy all the rules given in this Act.

Where any of the requirements as laid down under s.6 are not strictly observed, that non Observance of the requisite or requisites is enough to convert the adoption as invalid one. -***Dhanraj v. Suraj Bai*** [76]

Doctrine of factum valet does not have its application in case the adoption is against what is said by the provisions of the Hindu Adoption and Maintenance Act, 1956-***Lalla Ram v. Gohri Ram***[77]

Section 7 - Capacity of a Hindu Male to Adopt a Child

A male Hindu who is willing to adopt a child must fulfil the following conditions-

- He must be a major.
- He must be of a sound mind (i.e. he must not have any mental illnesses).
- The consent of the wife is necessary for the valid adoption. An adoption made without the consent of wife is void.
- A Hindu male who wants to adopt a daughter under must be at least 21 years older than the girl to be adopted.
- In ***Krishna Chandra Sahu v. Pradeep Das,***[78] it was held by Orissa High Court that the consent of the wife would be mandatory for a valid adoption.

The person taking in adoption must not suffer from idiocy or insanity; he must have the Capacity enough to understand the nature of the Act and what would be the legal effects of Adoption. Simultaneously it is not the requirement the person concerned must be possessed with a very high degree of intelligence. There is a very strong presumption favouring Soundness of mind. -***Babubarelal v. Gulzari Devi***[79]

Deaf and dumb but possessed with the capacity to express through signs and gestures, though not clearly, is to be taken as a person of sound mind. -***Ambrish Kumar v. Hatu Prasad***[80]

Proviso places a restriction as concerned to right to take in adoption that makes the consent of the wife a necessity so as to make the adoption valid. The consent must be obtained prior

[76] 1972 Raj LW 612
[77] 1972 All WR (HC) 612
[78] 1982
[79] 1979 All LJ 1333
[80] 1981 HLR 781

To the civil adoption takes place and not later on where the proviso is disregarded adoption Is not valid. -***Badrilal v. Bheru***[81]

In the case of divorce the consent is not necessary but in the case of judicial separation, Consent would be necessary. In case of two wives, consent must be of both the wives Despite the fact that one of them was not living under the same roof for a big job of twenty or thirty years. -***Bhooloo Ram v. Ram Lal***[82]

Section 8 - Capacity of a Hindu Female to Adopt a Child

The HAMA also lays down the following conditions for a female wishing to adopt a child:

- She must be of legal age.
- She must be of a sound mind.
- She must be unmarried or if she is married, the husband must give his full consent to adopting a child.
    - If the husband is of unsound mind or he has renounced the Hindu faith and the world or has dissolved the marriage, no consent is required in such case.
- If a Hindu female who desire to adopt a boy, she must be at least 21 years older than the child she wishes to adopt.

Section 9 – Who can Give up a Child for Adoption

Section 9 of the Act tells us about a person's capability to give his/her child for adoption to another person or married couple. The capacity has been divided under 3 parties having rights:

Rights of Father:

If the father is alive, he has the right to give in adoption, but such right will not be exercised without the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by the court of competent jurisdiction to be of unsound mind.

Rights of Mother:

The mother can give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Guardian:

If both the parents of the child are dead or the parentage of the child is unknown or if the child was abandoned, then the guardian of the child may give them up for adoption with the prior

[81] 1986 (1) HLR 81.
[82] 1989 (2) HLR 162

permission of the Court, provided that the Court is satisfied that such an adoption is for the child's welfare.

Effects of Adoption:

1. **Change in Parentage**: The adopted child's parentage changes, and the adoptive parents become the child's legal parents.
2. **Inheritance Rights**: The adopted child inherits the property of the adoptive parents, but not the property of the biological parents.
3. **Succession Rights:** The adopted child succeeds to the property of the adoptive parents, but not the property of the biological parents.
4. **Maintenance Rights:** The adopted child is entitled to maintenance from the adoptive parents, but not from the biological parents.
5. **Name and Surname**: The adopted child's name and surname may change to that of the adoptive parents.
6. **Religious and Social Status**: The adopted child's religious and social status may change to that of the adoptive parents.

In conclusion, the effect of adoption under the Hindu Adoption and Maintenance Act, 1956, is far-reaching and has significant implications on the adoptive child, adoptive parents, and biological parents. The adopted child's parentage, inheritance rights, succession rights, maintenance rights, name and surname, and religious and social status may all change as a result of the adoption.

12. Discuss the personal obligations of a Hindu to maintain certain relations, under the Hindu adoption and Maintenance Act, 1956.

The Hindu Adoption and Maintenance Act, 1956, imposes certain personal obligations on a Hindu to maintain certain relations. These obligations are discussed below:

Maintenance of children and aged parents

People who cannot earn money for themselves due to reasonable grounds need to be given maintenance in order to meet their basic necessities. Such people can include children and old people. Section 20 of the act states:

- A Hindu male or female is obligated to maintain their children whether they are legitimate or illegitimate.
- Children shall claim for maintenance from their parents as long as they are minor.
- An unmarried daughter shall be entitled to maintenance even after attaining the age of majority, till the day she gets married.

The section further prescribes that:

- Parents who are old or have physical or mental weakness need to be maintained if they are not able to maintain themselves.
- A childless stepmother will also be considered a '**parent**' in the context of this section.

Maintenance rights: Under s.20 of the Hindu Adoption and Maintenance Act,[5] both parents are legally obliged to maintain their legitimate and illegitimate child, if they had not converted to some other religion. And, in case of death of either or both the parents, then also, an illegitimate child has right to be maintained from parent's estate till the male child attains the age of 18-years, and daughter gets married.

20. Maintenance of children and aged parents. —(1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(1) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

But, if an illegitimate child converts himself/herself to another religion, then right of maintenance becomes subject to the provisions of s. 125(1)(b) and (c) of CrPC, as they can still claim maintenance from father if they are suffering from mental/physical abnormality or if the minor child is incompetent to maintain himself/herself.

Obligation to Maintain Wife:

Section 18 of the Act provides that a Hindu husband is bound to maintain his wife, if she is unable to maintain herself. Section 18(2) of the Hindu Adoption and Maintenance Act provides a list stating when a wife will be entitled to maintenance. As per the Section, a wife can live

separately from her husband and still have the right to claim maintenance in the following situations:

- The husband has deserted his wife by abandoning her without any reasonable cause and without seeking her consent or deliberately ignoring her wish.
- The wife has been subject to cruelty during her marriage and considers living with her husband to be endangering her life.
- If the husband is suffering from an incurable and contagious disease.
- The husband has another wife or a mistress in the same house or he lives with another wife or mistress at some other place.
- The husband has converted to some other religion or some other reasonable grounds that can justify why the wife should live separately.

Maintenance can be paid every month or in a lump sum. Even when the wife has some source of income and some property but needs some financial aid for necessary expenses such as medical expenses. It is the obligation of the husband to pay maintenance for such expenses if required.

Obligation to Maintain Widowed Daughter-in-Law:

Section 19 of the Hindu Adoption and Maintenance Act, 1956

The Hindu Adoptions and Maintenance Act, 1956, provides for the maintenance of a widowed daughter-in-law under Section 19 of the Act.

Section 19 of the Hindu Adoption and Maintenance Act, 1956, talks about the Maintenance of a Widowed Daughter-In-Law, and states that,

"(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law.

Provided and to the extent that she is unable to maintain herself out of her earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

(a) From the estate of her husband or her father or mother, or

(b) From her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not had the means to do so from any coparcenary property in his possession out of which the

daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law."

This section, stipulates that the Hindu wife should be cared for by her father-in-law after her husband has passed away, regardless of whether she was married before or after the act was carried out. This, however, is not enforceable if the widow is capable of supporting herself or if the father-in-law is not in a position financially to do so.

Additionally, the privilege is not valid if the lady receives maintenance from her late husband's or her parent's estate. The mother is also ineligible for the benefits of this section if she receives maintenance from her daughter, son, or property. Women who have remarried are likewise exempt from this rule.

Maintenance of the widowed daughter-in-law can be met up from the estate where the deceased husband had a share in the estate. To plead section 19 the deceased husband should have a share in the estate. In ***Raj Kishore Mishra v. Smt. Meena Mishra,***[83] the court decided that the father-in-law is under no obligation if he does not have sufficient means to provide maintenance through his coparcenary estate.

It is crucial to note that the daughter-in-law would have no right to claim the ownership of the property self-acquired by the deceased husband's parents. In ***Satpal v. Suman and Ors.***[84] It was stated that maintenance of the widowed daughter-in-law from the salary of the father-in-law would be inconsistent with section 19(2) of the Act. As the husband has no share in the father's salary, the widowed wife would also have no share.

Under the old Hindu law, an uncodified daughter-in-law had the right of maintenance against the self-acquired property of the father-in-law but it is important to consider that section 4 of the act which provides for a non-obstante clause would be having the overriding effect and the aforesaid rule would cease to exist subsequent to the enactment of the HAMA. Mother-in-law would not have any legal liability to support and provide finance for her daughter-in-law from her own estate or possessions.

In ***Venubai v. Laxman Lahanuji Rambhad,***[85] the court stated that it is important to understand that section 19 is a whole scheme in itself laying down obligation and its enforceability, and

[83] AIR 1995 ALLAHABAD 70
[84] 2019
[85] AIR 2008 BOMBAY 130

sections 19(1) and 19(2) are not independent of each other. Under section 19 the daughter has a right that corresponds to the obligation of the father-in-law.

Maintenance of dependants

Dependents of a deceased must be maintained if they do not have the capacity to do so by themselves. Section 21 of the act defines dependents and Section 22 states that such persons shall be entitled to maintenance.

Dependent is someone who relies on parents, brother or some other relative for sustaining themselves. Section 21 of the act says that in the context of this act dependents refer to the following relatives of the deceased:

- A father.
- A mother.
- A widow who has not remarried.
- A minor son, grandson, or great-grandson with predeceased father and grandfather. Provided he has not been able to obtain maintenance from any other source.
- Unmarried daughter, granddaughter, or great-granddaughter with predeceased father and grandfather. Provided she has not been able to obtain maintenance from any other source.
- A widowed daughter who has not been able to obtain maintenance from the estate of her husband, children, or from her in-laws.
- Widowed daughter-in-law, or widowed granddaughter-in-law, who has not been able to obtain maintenance from any other sources.
- An illegitimate minor son or illegitimate unmarried daughter.

In conclusion, the Hindu Adoption and Maintenance Act, 1956, imposes certain personal obligations on a Hindu to maintain certain relations, including parents, wife, children, and widowed daughter-in-law. These obligations are mandatory and must be fulfilled by the Hindu.

13. How does the Court determine the amount of award of maintenance?

The Court determines the amount of award of maintenance under the Hindu Adoptions and Maintenance Act, 1956, based on the following factors:

- The income and earning capacity of the person liable to pay maintenance.

- The income and earning capacity of the person entitled to receive maintenance.
- The number of dependents of the person liable to pay maintenance.
- The number of dependents of the person entitled to receive maintenance.
- The standard of living of the person entitled to receive maintenance.
- The age, health, and education of the person entitled to receive maintenance.

There is no fixed amount for maintenance that shall be paid. It is at the discretion of the court to determine the amount of maintenance. Section 23 of the act states that while deciding the amount of maintenance to be awarded to a wife, children, or old and infirm parents – the court must do so considering the following:

- Status of parties and their current position;
- The claims of the parties within reasonable limits;
- If the claimant living separately have justified grounds in doing do;
- All sources of income of the claimant and the value of their property;
- The number of people that are entitled to be maintained.

Section 23(3) further simplifies the process of deciding the amount of maintenance payable to other dependents. It says that the amount of payment to be made should be with regard to:

- The net value of the deceased's property after clearing off all his debts;
- Will of the deceased if any;
- Degree of the relationship between the claimant and the deceased and their past relationship;
- What the dependents want within reasonable limits;
- All sources of income of the dependent and the total value of all their properties;
- The number of dependents that can be entitled to maintenance.

Alteration of the amount due to change in circumstances

The amount of maintenance to be paid can be decided by the court or by an agreement between the parties. Maintenance is paid to provide aids for the basic needs of everyday life in case a person does not have the source or ability to provide for themselves.

Section 25 of the act states that the amount of maintenance may be altered with the change in circumstances. But, the section is vague. It does not say on what changes in circumstances can the alteration be sought and how the alteration can be done.

In the case of ***Binda Prasad Singh v. Mundrika Devi,***[86] the High Court of Patna observed that there was no set procedure mentioned in Section 25 as to how the amount can be altered.

The court stated that:

- The amount of maintenance is fixed either by an agreement or by way of a decree.
- The only way to alter an agreement is by way of another agreement, and the decree can be altered by amendment of degree.
- So, another suit must be filed for altering the amount of maintenance and a new decree that supersedes the older one must be granted if the court thinks fit.

[86] AIR 1968 PATNA 196

IMPORTANT CASE LAWS UNDER HAMA,1956

- ***Shabnam Hashmi v Union of India AIR 2014 SC***

The petitioner was a Muslim who had adopted a young girl when she was small. She had filed the petition for recognition of the right that a person belonging to any religion could adopt a child since the Muslim law did not allow for adoption. The Supreme Court held that the Juvenile Justice Act was an enabling legislation and it aims at achieving the purpose of a Uniform Civil Code Thus, it was held that any person belonging to any religion could adopt a child subject to the rules framed. On the point of giving Adoption, the status of a Fundamental right, it hesitated but recognized the statutory right to adopt.

- ***Sawan Ram v Kalawanti AIR 1967 SC 1761***

It was held by the court that an adoption by the female Hindu will not be for herself but also for her husband who is dead. An adopted son would be deemed to be a member of the family of the deceased husband. Since the adopted child loses all the rights to his biological family, the same are to replaced by similar rights in the adoptive family. Thus, he would get rights of a member of that family as an adopted son of the husband.

- ***In Re: Adoption of Paya Sharinee by Vinay Pathak and his wife Sonika Sahay Pathal 2010(1) Bom CR434***

In this case, a petition was filed before the Court wherein the question before the court was that whether a Hindu couple governed by the HAMA, 1956 who was having a natural child of their own could adopt a child of the same gender by taking recourse of the provisions of JJ Act of 2000. It was held that the HAMA, 1956 imposed a restriction on the adoption of a child who had the same sex as the natural child, but the two Acts would have to be read harmoniously.A child could be adopted y a Hindu couple under the JJ Act if the child completed the description of the specific class of children for whom the JJ Act was made.

- ***Shrinivas Krishnarao Kango v. Narayan Devji Kango, 1954 AIR 379***

In this case, a petition was filed by an adopted child for a share in the property of his joint undivided property. It was argued by the defendants that the adopted child was only entitled to the property which was ancestral in nature and no the self acquired property. It was held by the court that in cases where a child was adopted, the effect of adoption is such that it created a legal fiction and the child becomes the natural heir. Where an adoption is made by the widow of a Hindu then the effect of adoption is such that it relates back and makes him eligible for all the rights of a son from the date of death of the Father.

- ***Laxmi Kant Pandey v. Union of India 1984 AIR 469***

In this case, a letter by an advocate was stated that voluntarily and social organizations and agencies were indulging in malpractices by offering services of inter country adoption. The children were ending up in poor condition, being forced into beggary and other horrendous things. This case pertained to Adoption of children who were abandoned, destitute and living in the child or social welfare homes.

The SC took judicial notice and directions were issued. A regulatory body known as CARA was directed to be formed which was to oversee the whole process of adoption.

It was directed that every application for adoption by a foreigner must be sponsored by a child/ social welfare agency of the foreigner's country. The Biological parent must never get to know who is adopting the child. All the details of the family, assets, liabilities, recent, photographs, tax details, medical history etc. must be submitted along with the application.

- ***Rahasa Pandini (Dead) By Lrs. v. Gokulananda Panda AIR 1987 SC 962***

In this case, a Child was adopted by a woman and the child belonged to the sister of her dead brother. The child passed away after some time, and the woman bequeathed her property to some relatives. A suit was filed by another person after several years praying for a declaration that he was he adopted child of the woman.

It was held that when there is a claim for adoption then the same has to be proved by way of clinching evidence. An oral adoption must be presented with some documentary evidence which could dispel the clouds of uncertainty.

- ***Lakshman v Rup 1981 SC 1378***

It seems that no specific Shastric or customary ceremony is necessary. Performance of customary ceremony such as feeding the child in the lap or pugri tying with or without offering to Brahmins or the sacred fire or saffron water drinking may indicate is manifest, no particular form is necessary.

- ***Pentakota Satya Narayana v. Pentakota Seetharathnam 2005 SC 4362***

Alleged adoption was made by the husband and the first wife who was estranged at the time of adoption. The estrangement between the spouses was due to the second wife taken by the husband. Through the second wife, the husband had three children. The first wife though claimed maintenance for herself never claimed maintenance for the adopted child. Under the circumstances adoption was held not to be proved.

- ***Nanda Kishore v Bhupendra 1966 Cal 181***

He can claim maintenance against his adoptive parents or against any person, against whom as a natural child he could have claimed maintenance. Conversely, he is liable to maintain all those persons whom a natural child has an obligation to maintain. The adopted child's right of maintenance ceases oh his attaining majority.

- ***Ugre Gowda v. Nagegowda 2004 SC 3974***

Section 13 lays down that subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will.

- ***Hirabai v Baba Manika Ingale 1980 Bom 315***

The Bombay High Court took the view that a surrender made by widow of her interest in the joint family property in the favour of an adopted son was valid and that proviso to Section 12 and Section 13, HAMA was meant only to protect the other rights vested in any person prior to the adoption and was not intended to deprive the adopted son person prior to the adoption and was intended to deprive the adopted son of the right in the property belonging to the joint family wherein such a son would have got an interest by birth , the date of his birth only being fixed fictionally to the date of adoption.

- ***Ramana v Shankarappa, 1988 Kant 248***

The introduction of a member into a joint family by birth or adoption, may have the effect of decreasing the share of the rest of the members of the joint family, but it certainly does not involve any question of divesting any person of any estate, but with more members than before. There is no fresh vesting or divesting of estate in anyone.

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2. Commissioner of Wealth Tax v. R. Sridharan, AIRONLINE 1976 SC 2
3. Sapna v. State of Kerala, AIR 1993 KERALA 75
4. State of Bombay v. Narasu Appa Mali, AIR 1952 BOM 84
5. M.P. Keshava v. State of Madras, AIR 1951 SUPREME COURT 128
6. Ram Prasad v/s Dahin Bibi, AIR 1924 Pat. 420
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10. Broadbent vs. Wilkes, (1742) Willes,360
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12. Mohd. Ahmed khan v. Saha Bano Begum, 1985 SCR (3) 844
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14. Balwant Rao v. Baji Rao, (1920) 22 BOMLR 1070
15. Dolly Rani v. Manish Kumar Chanchal 2024 INSC 355
16. Tikait v. Basant, (1901) ILR 28 CAL 751
17. Shivonandh v. Bhagawanthuma, 2006 (2) SCC 578
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20. Bhagwati Saran Singh v. Parmeshwari Nardar Singh, 1942 ILR All. 518

21. Lily Thomas v. Union of India, 2000 CRILJ 2433

22. Smt. Yamunabai v. Anant Rao, AIR 1988 SUPREME COURT 644

23. Revanasiddappa v. Mallikarjun, 2023 INSC 783

24. M.M. Malhotra v. Union of India, AIR 2006 SC 80

25. Surjeet Kaur v. Jhujav Singh, AIR 1980 PUNJAB AND HARYANA 274

26. Shankutala Devi v. Amar Nath, AIR 1982 PUNJAB AND HARYANA 221

27. Balaswami Reddiar v. Balakrishna Reddiar, AIR 1957 MADRAS 97

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29. Nikhil Kumar v. Rupali Kumar, AIR 2016 SC 2163

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33. Suresh Babu v. Leela, 2006 (3) KLT 891

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37. Savitri Pandey v. Prem Chandra, AIR 2002 SUPREME COURT 591

38. Durga Prasanna Tripathy v. Arundhanti Tripathy, AIR 2005 SUPREME COURT 3297

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41. Chetan Das v. Kamla Devi, AIR 2001 SUPREME COURT 1709

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43. Dastane vs Dastane, AIR 1975 SC 1534

44. Swapna Ghose v. Sadanand Ghose, AIR 1989 CALCUTTA 1

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52. Amar Kanta Sen v. Sovana Sen, AIR 1960 Cal 438

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78. Venubai v. Laxman Lahanuji Rambhad, AIR 2008 BOMBAY 130

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80. Shabnam Hashmi v Union of India, AIR 2014 SC

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82. In Re: Adoption of Payal@ Sharinee Vinay Pathak and his wife Sonika Sahay @ Pathal, 2010(1) Bom CR434

83. Shrinivas Krishnarao Kango v. Narayan Devji Kango, 1954 AIR 379

84. Laxmi Kant Pandey v. Union of India, 1984 AIR 469

85. Rahasa Pandini (Dead) By Lrs. v. Gokulananda Panda, AIR 1987 SC 962

86. Lakshman v Rup, 1981 SC 1378

87. Pentakota Satya Narayana v. Pentakota Seetharathnam, 2005 SC 4362

88. Nanda Kishore v Bhupendra, 1966 Cal 181

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91. Ramana v Shankarappa, 1988 Kant 248